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IN THE

Supreme Court of the United States

JOHN F. ANDERSON,
Petitioner,

v.

THE IOWA CITY DEVELOPMENT BOARD,
Respondent.

and

CITY OF DES MOINES, IOWA,
Intervenor.

On Petition for a Writ of Certiorari to the Supreme Court of Iowa

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Iowa enacted chapter 17A as an administrative procedure code for the purpose of providing "a minimum procedural code for the operation of all state agencies when they take action affecting the rights and duties of the public". In the 17A.19 judicial review provision the legislature enumerated an exhaustive list of constitutional and common law causes of action as well as remedies without foreclosing other court action to seek relief. In enacting 368.22 as the exclusive means to seek annexation judicial review, the legislature denied aggrieved parties all other modes of petition to seek relief and then abridged the constitutional and common law causes of action and remedies in annexation proceedings by removing the enumeration of 17A.19 from judicial purview. Concurrently, the Iowa Courts have denied all claims for Due Process by misconstruing *Hunter v. Pittsburgh*, 207 U.S. 161 (1908) in conflict with the scope and jurisdiction of that ruling and in direct conflict with subsequent rulings by the U.S. Supreme Court. The question presented is:

I. Can Iowa eliminate citizens constitutional and common law grounds of action and remedies by statutorily listing them in § 17A.19 and then abridging the general statutory provisions in an exclusive and special law for annexation (§ 368.22) while concurrently nullifying the due process rights of citizens through state judicial error that conflicts with multiple rulings of the U.S. Supreme Court without violating the U.S. First and Fourteenth Amendments?

At the same time the petitioner was barred from involuntarily annexing his property to Carlisle, Des Moines was allowed to involuntarily annex his prop-

erty based upon a moratorium line both cities, the attorney general and DOT admit did not exist as applied when noticed and heard. Over the course of years, at least 25 other property owners were granted extralegal 368.7 operation by the CDB to voluntarily and involuntarily annex A98-03 property to Des Moines. The petitioner was time barred from annexing his property to Carlisle by Iowa Code § 368.7(4). The courts ignored indisputable proof of collusive dishonesty and misrepresentation by the city and state agencies to accept that the city concocted and state approved fabricated evidence was more valid than city staffing reports, city financed analyses, public reports and records, and the U.S. Census regarding city abilities to serve the territory. The dishonest conspiracy of the city and state is evinced by altered records, illegal annexations, and fabrication of facts and disregard of pertinent law in A98-03 and interim actions like UA04-31. The Fourteenth Amendment and 42 U.S.C. § 1983, § 1985 and, § 1986 proscribe collusion and dishonesty by government actors and disregard of those actions. The courts evasion of the Fourteenth Amendment limitations on government and protection of citizens brought forth in this petition are statutorily barred by 42 U.S.C. 1986. The question presented for review is:

II. Can Iowa evade constitutional limitations in annexations through the collusive misrepresentations, deceit, and fraud of the city, the Iowa City Development Board, and the Iowa Attorney General where each conspired with the others to create fraudulent proceedings, altered records, and pro forma processes in which the courts are complicit without violating the U.S. Fourteenth Amendment and 42 U.S.C. § 1983, § 1985, and § 1986?

PARTIES TO THE PROCEEDINGS

Petitioner is a private property owner and elector in rural Polk County Iowa who has been denied both voluntary and involuntary annexation to the city of Carlisle.

Respondent is the Iowa City Development Board/ A98-03 involuntary annexation committee comprised of the majority City Development Board and a minority of local representatives (henceforth collectively referred to as "CDB") including the Iowa judicial branch Attorney General acting as counsel and participatory advisor to all CDB functions.

The intervenor city of Des Moines is the applicant of the involuntary annexation at issue titled A98-03.

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OPINIONS BELOW

The decision advanced for review is reported at *Anderson v. City Development Board*, Court of Appeals No. 8-1010 / 07-1105 (2009) (*Anderson IV*) a decision affirming final agency action on the involuntary annexation of the petitioners home (A98-03). The following cases were dismissed upon exhaustion of administrative remedies in the case of A98-03 in

whole, or in part: *Dunn et al v. CDB*, 825 N.W.2d 820 (2001) certiorari challenging acceptance of a flawed A98-03 petition; *Anderson v. City Development Board*, 631 N.W.2d 672 (Ia.2001) (*Anderson I, West Carlisle*) upholding denial of 368.11 annexation to Carlisle by 5% of the electorate; *Des Moines v. City Dev. Bd.*, 633 N.W.2d 305 (Iowa 2001) challenging CDB stay of A98-03 and refusal to divide petition; *Anderson v. City Development Board of the State of Iowa*, (Polk County District Court CV4022 (2002)) (*Anderson II*) challenging the CDB decision not to dismiss A98-03 pursuant to 368.4; *Anderson v. City Development Board*, 660 N.W.2d 231 (2003) *unpublished* (*Anderson III*) seeking declaratory relief of 368.4 overbreadth and Due Process challenge of 1990 Des Moines/Carlisle moratorium; *Anderson v. City Development Board*—05-0577 CDB 723 N.W.2d 449, *unpublished* (*Iowa 2006*) (*Anderson IV*) challenging the completion of a petition by a petitioner without 368.7 standing 6 years past the 368.7 deadline and the inequitable operation of law. CDB findings of fact and conclusions of law include this case, A98-03 2Sep2005 (involuntary) and interim voluntary annexations past the 368.7 30 day deadline while the appellant was barred include: UA01-48 14Nov2001 (1 owner); UA01-49 14Nov2001 (1 owner); UA02-04 21Feb2002 (1 owner); UA02-09 22May2002 (11 owners); UA02-20 22July2002 (2 owners); UA02-29 19Nov2002 (1 owner); NC02-30 16Dec2002 (1 owner, 1 involuntary owner); UA03-24 18June2003 (2 owners); UA03-43 22Sep2003 (2 owners); UA03-57 17Dec2003 (2 owners); UA04-31 1Nov2004 (no valid petition) (Appendix E); UA04-39 11Jan2005 (1 owner); Des Moines voluntary without CDB findings 24March 2003 (6 owners).

STATEMENT OF JURISDICTION

The Supreme Court of Iowa entered its final judgment against the petition by denying rehearing on May 19, 2009. Petitioner respectfully invokes this Court's jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First Amendment to the United States Constitution as applicable to Iowa through the Fourteenth Amendment.

And

Section 1 of the Fourteenth Amendment to the United States Constitution.

FEDERAL STATUTES INVOLVED

U.S. Code Title 42 § 1983.

U.S. Code Title 42 § 1985.

U.S. Code Title 42 § 1986.

STATEMENT OF THE CASE

In 1963 the state enacted an annexing moratorium statute which forbid any agreeing city from annexing the encompassed territory. In 1975 the statute was reenacted without legislative alteration as § 368.4 to facilitate municipal home rule. In 1990, the cities of Des Moines and Carlisle published notice and held hearings to enact a § 368.4 moratorium that included the rural properties between them for a period of 10 years for the express purpose of preventing annexation petitions by rural property owners that deviated from the cities desires (App. D, p. 37a) which was subject to Iowa Code § 114A.9(1990). The moratorium expired in 2000.

In April of 1998, Des Moines filed the 1990 agreement 8 years past the 30 day deadline of § 368.4 and commenced involuntary annexation of 25 square miles of private rural property (A98-01) which was dismissed by the CDB in May of 1998 due to faulty notice. In April 1998 the petitioner and his neighbors pursued voluntary annexation to the city of Carlisle within the 30 day limitation of § 368.7(4) not to "avoid" annexation but simply choosing another city, but were barred by the moratorium. The petitioner and his neighbors, as 5% of the electorate, attempted to involuntarily annex to Carlisle pursuant to § 368.11 (A98-02, henceforth "West Carlisle"). Then Des Moines filed the involuntary annexation at issue here (A98-03) for 14 square miles of rural private property.

At a July 1998 joint hearing on West Carlisle and A98-03, the CDB dismissed West Carlisle's petition on the basis of § 368.4 but continued hearing on A98-03 after deficiency issues were raised by opponents.

Subsequently in 1998 the CDB refused to rehear West Carlisle and then accepted A98-03 on the contingency that it could later be amended, and then stayed action on A98-03 until judicial review of West Carlisle was completed. The acceptance of A98-03 was challenged in *Dunn et al v. CDB*, 825 N.W.2d 820 (2001) which was ultimately dismissed on A98-03 exhaustion grounds.

In 1999, the city attempted to fragment the territory and proceed upon the several parts of A98-03, which was denied. The city sought review of that CDB decision and the stay on A98-03 as recorded in *Des Moines v. City Dev. Bd.*, 633 N.W.2d 305 (Iowa 2001).

In 2001, the Iowa Supreme Court reversed the West Carlisle District Court ruling on the grounds that § 368.4 ". . . language is no longer limited to a restriction on the actions of the parties to the agreement, but also requires dismissal of any petitions that would offend the agreement"; and "the moratorium agreement itself did provide a somewhat ambiguous description of the land in question. However, when combined with the maps provided, such a description clearly alerts those in the affected area that their land falls within the agreement." *Anderson v. City Development Board*, 631 N.W.2d 672 (Ia.2001) *(West Carlisle).*[1]

The petitioner then sought declaratory relief that the moratorium was improperly instituted under § 368.4. The appeal was dismissed upon *West Carlisle* res judicata grounds despite the § 368.22 bar of declaratory relief in the *West Carlisle* review. *Anderson v. City Development Board*, 660 N.W.2d 231 (2003) *unpublished.*

Because A98-03 territory was also depicted on the moratorium "maps" the petitioner requested an evidentiary hearing to expose that A98-03 was barred by § 368.4. All hearing witnesses identified the 1990 described line within the limits of Des Moines on 1990-1994 DOT maps as E14th Street. No witness identified a line outside Des Moines limits on either 1990 maps or aerial photos of the rural area. The CDB abandoned the wording of the agreement to adopt an undefined 'corridor' to qualify that A98-03

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[1] The ruling also declared "no section of 368 provides West Carlisle with the authority to annex Carlisle" (*id.* at 675) despite the clear 368.11 authority of "five percent of the qualified electors of a city or territory involved in the proposal" to conduct an involuntary annexation.

did not annex on Carlisle's side of the line. Appeal of the CDB findings and conclusions was dismissed upon A98-03 exhaustion grounds after the city and state stipulated the issues preserved for A98-03 review (App. F, p. 51a).

The city commenced around 15 voluntary annexations of A98-03 territory, years after the 30 day deadline of § 368.7(4). One annexation, UA04-31, was challenged by the petitioner all the way to the Iowa Supreme Court on the basis of equal protection and lack of a valid petitioner[2] *Anderson v. CDB*, 723 N.W.2d 449, *unreported* (2006) which was dismissed on standing and A98-03 exhaustion grounds. The CDB findings and ruling of UA04-31 were not in the record of A98-03 as other annexations were.

In June 2005 the CDB held the A98-03 public hearing but continued the hearing after requesting an updated petition. Seven years after notice was mailed in 1998, no notice was sent to the 800 property owners in 2005 or to persons acquiring property in the intervening time.

In August 2005 the hearing reconvened. The city spoke without interruption for 4 hours and cross examination was controlled by a city attorney in a panel format at the end of the city's presentation. In turn, citizens were harried to complete presentations because the chairman had made a 5pm appointment on the day the CDB was to hear the "largest annexa-

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[2] The issue of standing was first raised in the Court of Appeals which ruled that because the petitioner lived an arbitrary distance from the annexation the petitioner lacked standing to challenge an annexation of A98-03 territory by a petitioner with no § 368.7 standing at all.

tion in Iowa history". The hearing was concluded without adopting amendments or the updated petition.

On August 30, 2005 the CDB held a 'decisional meeting' where public input wasn't allowed. At this meeting, the CDB adopted both the amendments and updated petition without discussion and found the 1998 petition to be correct and properly filed despite city acknowledged deficiencies. On Sept 2, 2005 the CDB issued it's findings of facts, conclusions of law and issued orders to Polk and Warren counties to hold special elections pursuant to 1997 Iowa Code § 368.19. The CDB issued a second set of orders for a special election to clarify the maps and descriptions the election officers found to be insufficient.

The CDB received more than 90 petitions for rehearing from territorial, rural, and city residents. Without opportunity for applicants to speak, the CDB denied all petitions for rehearing. Within 30 days the petitioner initiated this action in Polk County District Court.

Under § 368.19 the special election combines the rural territorial electors with the electorate of the city. Prior to the election, the CDB and AG took no action after the petitioner alerted them that the polling places of annexed electors would not be open, and no notice would be provided. Polk County held a city election instead of the mandated special election. Warren County held no election and sent no notice to annexed electors.

On Election Day, rural residents polling places were closed with no posted directions on where to vote, while city electors found their polls open and staffed. If rural electors found the city polls in the absence of statutorily mandated 'vote here' signs,

many were not listed as electors. It is unknown how many rural electors were disenfranchised by holding a city election instead of the mandated special election.

The petitioner timely filed an amended brief contesting the legality of the election pursuant to § 368.22. Concurrently, the petitioner petitioned the Polk County election office for a contest court pursuant to Iowa Code § 57.1 which was denied.

The respondents motioned to dismiss declaratory relief and contest of legality of the election. After the District Court granted the motion, the petitioner sought interlocutory review which was denied.

The District Court noted that issues have been preserved at Appendix B p. 18a but then discarded the preservation on the basis of 368.22 and a jaundiced reading of the petitioners briefs and the misconstruance of *Hunter v. Pittsburgh*, in a footnote.

The petitioner timely filed appeal of the District Court Ruling. The Iowa Supreme Court transferred the case to the Iowa Court of Appeals which in turn upheld the earlier rulings, adopting the District Court ruling as its own for the most part but stated the outcome of the election should have been contested under § 57.1 instead of the 'legality of the election' under § 368.22.

The Iowa Supreme Court denied the petition for further review on May 19, 2009 and the petitioner timely filed this petition seeking certiorari.

REASONS FOR GRANTING THE WRIT

MAY IT PLEASE THE COURT:

I. INTRODUCTION

Absent the intervention of this Court, Iowa's deprivation of Petitioners' federally protected rights is complete.

In Iowa, the annexation scheme of the state withdraws statutory, constitutional, and natural rights from citizens being annexed. When a legislature enumerates constitutional protections, causes of action, and remedies as statutory provisions, rescinding the statute does not repeal the constitutional elements, except in Iowa annexations. When an error of the Iowa court, which conflicts with U.S. Supreme Court rulings, is repeated many times, the error does not become valid or lawful, except in Iowa annexations. The denial of equal protection of law lies in excluding individuals from operation of either prohibitive or provisional law: in this Iowa annexation the equal protection of law has not been provided to the petitioner where law operated upon judicial whimsy instead of precedent, stare decisis, and common sense with no countervailing government interest for abandoning the constitution.

Due process guarantees honesty and integrity in government actors including members of the bar and bench, especially when constituting a tribunal for a hearing affecting the rights, property, and duties of citizens. Because the courts refused to address issues which had been preserved and briefed, all levels of the Iowa Courts are complicit in the dishonesty, collusion, and misrepresentation involved in the annexation at bar. [I]n states bound together by a Constitution and subject to the Fourteenth Amendment, great

caution should be used not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact. *McDonald v. Mabee*, 243 U.S. 90, 91 (1917).

The Iowa annexation scheme alters the function of the U.S. Supreme Court from that of the court of last resort to a court of first resort in which a fair hearing can be petitioned for. "A fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison*, 349 U.S. 133, 136 (1955).

If judicial review of legislative and executive acts is constitutional in nature as posited in *Marbury v. Madison*, then it may not be diminished in any way other than constitutional amendment. In the case at bar, the appellants U.S. First Amendment rights of petition, and U.S. Fourteenth Amendment substantive and procedural due process, takings limitations, and equal protection rights as well as civil rights under U.S.C. title 42 have been subsumed for annexation by a three branch attack of Iowa Government. The tri-branch attack places annexed citizens outside constitutional protections and immunizes government for violating constitutional limitations in annexation actions where the state courts will hear no petition, see no petition, or speak to any petition issue the court disfavors.

[A] State may not, by any of its agencies, disregard the prohibitions of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts, and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment. In determining what is due process of law, regard must be had to substance, not to form. This Court, refer-

ring to the Fourteenth Amendment, has said: "Can a State make anything due process of law which, by its own legislation, it chooses to declare such? To affirm this is to hold that the prohibition to the States is of no avail, or has no application, where the invasion of private rights is effected under the forms of state legislation." *Chicago, B. & Q. R. Co. v. Chicago*, 166 U.S. 226, 235 (1897).

The State Courts claim to be bound by legislative abridgment of the right to petition while arbitrarily and concurrently ignoring the provisions of the same statute related to the legality of elections. Thus the Iowa courts have created a conundrum for annexed citizens: petitions will not be heard for causes of action the legislature abridged; the remedy of declaratory ruling cannot be applied to annexation due to legislative abridgment (*Anderson III*); the grounds of 'due process' cannot be sued upon due to rote judicial error; and finally, the court arbitrarily substitutes it's notion of what the legislature should have said to discard explicit statutory wording it disagrees with. For annexed citizens, Iowa annexation rules, law, and review rest on the shifting sand of judicial whimsy where city deficiencies and procedural safeguards are excused with arbitrary and baseless "substantial compliance" rulings and state government declares itself free from constitutional limitation. "States retain substantial leeway to establish the contours of their judicial systems, but lack authority to nullify a federal right or cause of action they believe is inconsistent with their local policies. *Haywood v. Drown*, 556 U.S. __ (2009).

II. THE IOWA COURTS ANNEXATION RULINGS CONFLICT WITH MULTIPLE RULINGS OF THE U.S. SUPREME COURT.

Since at least 1961 the Supreme Court of Iowa has judicially removed due process protections of annexed rural citizens without basis. The Iowa courts denial, as a footnote, of the petitioners takings claims, substantive and procedural due process claims, uniformity claims and even Iowa Constitution article III § 30 and § 38A preemption claims was premised on the Iowa courts erroneous interpretation of *Hunter v. Pittsburgh*, 207 U.S. 161 (1908) which directly conflicts with the jurisdiction, scope and authority of that ruling. The knowing tolerance for violation of the limitations set forth in the First and Fourteenth Amendment in annexations by the Iowa Supreme Court and it's minions erodes both the rule of law and the ethics of the entire U.S. Court system because a ". . . law repugnant to the Constitution is void; and that *courts*, as well as other departments, are bound by that instrument." *Marbury v. Madison*, 5 U.S. 137, 180 (1803) The Iowa court's conflicted ruling was addressed to the agency and fully briefed in both District Court and on appeal: the Iowa courts just didn't care about citizens rights or government limitations because it's error purportedly nullified due process and its associated causes of action and relieved the court of any duty to adjudicate the issues.

Where the legislature has said the petitioner can annex his property to the city of his choice, the scheming of Des Moines and the executive and judicial branches have revoked the statutory right without repealing the law. A government of laws is a government of processes thus a government where actors are relieved of due process requirements is not

based upon law, but upon the whimsy of decision makers which is a violation of due process. For an extensive discussion of the rights which Iowa annexation abrogates by taking private property through taxation and restrictive city codes which deprive the owners of uses the owners could rightfully put property to while outside a city's limits : *see "Chicago, B. & Q. R. Co. v. Chicago*, 166 U.S. 226, 233-244 (1897)". That Iowa annexations like A98-03 were barred by takings claims prior to the Fourteenth Amendments adoption is proven by *Morford v. Unger 8 Iowa*, 82, (Ia. 1857), and the Fourteenth Amendment bolsters the preexistent protection. How Hunter allows Iowa to evade constitutional proscriptions against takings in annexation is unknown and unexplained.

A. *Hunter v. Pittsburgh* has been utilized by Iowa as the universal remedy to dismiss aggrieved citizen petitions on due process issues in annexations for decades.

Hunter is premised upon the Dillon Rule which is that as creatures of statute, city authority is limited to statutory grant. Iowa discarded the Dillon Rule for Home Rule in 1969 so that city authority now stops at the statutory fence line instead of the statutory chain of Dillon—neither rule was applicable to citizen's private property or rights in 1908 and *are* not applicable in 2009. The Iowa Courts have deliberately applied a rule for statutory creatures to annexed citizens in order to occlude citizen's statutory and constitutional rights.

The Iowa Courts have misconstrued the Hunter ruling as a grant of unqualified discretion over 'citizens' rights and property by claiming to cite Hunter but altering both the text and context of that ruling.

This "quote" with the words limiting the scope to municipal corporations deliberately excised by the state courts, conflicts with, and in no way resembles the Hunter ruling which actually states:

> "Although the inhabitants and property owners may by such changes suffer inconvenience, and their property may be lessened in value by the burden of increased taxation or for any other reason, ~~they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and~~ there is nothing in the federal Constitution which protects them from these injurious consequences. . ." (emphasis added to excised words) *Hunter* at 179.

Thus the state has deliberately fabricated precedent from Hunter to nullify the constitutional rights and causes of action of annexed rural citizens.

The conclusion that the state intentionally departed from stare decisis in 1961 is undeniable in light of this courts ruling in *Gomillion v. Lightfoot*, 364 U.S. 343 (1960) interpreting *Hunter*: "All that the case held was (1) that there is no implied contract between a city and its residents that their taxes will be spent solely for the benefit of that city, and (2) that a citizen of one municipality is not deprived of property without due process of law by being subjected to increased tax burdens as a result of the consolidation of his city with another." *Id.* at 342. Also: "The *Hunter* opinion itself intimates that a state legislature may not be omnipotent even as to the disposition of some types of property owned by municipal corporations" *id.* at 344. "Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed

by the United States Constitution." *Id.* at 345. Also, in addressing the Fifteenth Amendment there is a direct correlation to the Fourteenth Amendment: "The opposite conclusion, urged upon us by respondents, would sanction the achievement by a State of any impairment of [civil] rights whatever, so long as it was cloaked in the garb of the realignment of political subdivisions. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence." *Id.* at 345. Also: "Acts generally lawful may become unlawful when done to accomplish an unlawful end, and a constitutional power cannot be used by way of condition to attain an unconstitutional result." *Id.* at 347 (internal citations omitted).

Either the U.S. Supreme Court did not understand the Hunter ruling in 1960 when rendering *Gomillion*, or the Iowa Courts did not understand how to derive precedent in *Cedar Rapids v. Cox*, 108 NW2d 253, 260 (1961) because one is right and the other is wrong and in direct conflict with the Federal Constitution.

Additionally, the annexation at bar involves private property and rights of citizens with virtually no public property to make Hunter germane. The Hunter court expressly stated it did not rule upon, and did not have jurisdiction to rule upon, the taking of private property or rights of private property owners. (*See Hunter* at 181).

Absent a criminal conviction or exigent circumstances, a citizens constitutional rights cannot be a removed by statutory enactment or judicial manipulation except in Iowa annexations. Court abstention from the issues in this case does not validate the void Iowa precedent or eliminate the conflict with the authority of the U.S. Supreme Court. "[I]t must be

observed that the prohibitions of the [Fourteenth] amendment refer to all the instrumentalities of the State—to its legislative, executive, and judicial authorities—and therefore whoever, by virtue of public position under a state government, deprives another of any right protected by that amendment against deprivation by the State, "violates the constitutional inhibition, and, as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State." This must be so, or, as we have often said, the constitutional prohibition has no meaning, and "the State has clothed one of its agents with power to annul or evade it." *Chicago, B. & Q. R. Co. v. Chicago*, 166 U.S. 226, 234 (1897); (*see also Cooper v. Aaron*, 358 U.S. 1, 17 (1958)).

By the rulings in this case the Iowa courts have violated the 14th Amendment and § 1983 and § 1986 of U.S.C title 42. Because the Iowa Courts rejection of all 'due process' claims is without authority or foundation, it is undeniable that the appellant has been denied equal protection, due process, and uniform operation and takings protections under the U.S. Fourteenth Amendment. It is manifest that the framers of the 14th Amendment and the civil rights laws of the United States contemplated that this Court should sit in review of actions by the highest of state actors under color of state law that violate the Fourteenth Amendment when the state refuses to do so.

> In the Civil Rights Acts, Congress established causes of action arising out of rights and duties under the Constitution and federal statutes. These causes of action exist independent of any other legal or administrative relief that may be available as a matter of federal or state law. They

are judicially enforceable in the first instance. *Burnett v. Grattan*, 468 U.S. 42, 50 (1984).

B. The rulings of the Iowa Courts have denied the petitioner the equal protection of both statutory and constitutional law and are in direct conflict with decisions of this court on these matters.

By that portion of the fourteenth amendment by which no State may make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, or take life, liberty, or property, without due process of law, it has now become the fundamental law of this country that life, liberty, and property (which include 'the pursuit of happiness') are sacred rights, which the Constitution of the United States guarantees to its humblest citizen against oppressive legislation, whether national or local, so that he cannot be deprived of them without due process of law. *Bartemeyer v. State of Iowa*, 85 U.S. 129 (1873).

By groundless and arbitrary use of 'substantial compliance' to excuse city failures to comply with procedural and substantive requirements, the courts have whimsically adhered to or departed from statutory provisions. At the same time the state employed strict compliance on opposed parties or discarded clear statutory provisions enabling the petitioners 368.7 and 368.11 petitions based upon irrational reasoning or city legislation he had no representation in. The CDB and Iowa courts arbitrarily applied or discarded statutory wording to accommodate the annexation goals of Des Moines.

While adhering to § 368.22 to evade constitutional issues, the Courts claimed that § 368.22 challenge of

the legality of the election could not be maintained. It's a binary issue, either the election was legal, or it was not. If the election did not follow state election laws, or the orders of the CDB, or the mandates of § 368.19 it was illegal. The election on A98-03 was clearly illegal and the courts refusal to rule upon the issue denied the petitioner the equal protection of law. "Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). The public measure passed.

Iowa Constitution Article III § 30 limits in relevant part: "The general assembly shall not pass local or special laws in the following cases: . . . For the incorporation of cities and towns . . . In all the cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the state . . ."

§ 368.22 of the 1997 Iowa Code violates the Iowa Constitution Article III § 30 proscription against local or special laws for annexation. In *Des Moines v. City Dev. Bd.*, 633 N.W.2d 305, 311 (Iowa 2001) the Iowa Supreme Court found § 368.22 to be a special law which renders § 368.22 a nullity under Iowa Constitution Article III § 30 because it is not merely voidable, it is void. In the alternative, as adjudicated by the Iowa courts in this case, a constitutional provision is moot without statutory enactment, and a statutory enactment can render a constitutional limitation moot by declaration of exclusivity.

It is the duty of the Courts to enforce the laws as they are written, not how they think they should be

written to accommodate the goals of cities. The Courts use of 'substantial compliance' to validate government pleadings that are otherwise void denies the petitioner the equal protection of law guaranteed by the U.S. Fourteenth Amendment because they dispose of the legislated procedural safeguards and constitutional guarantees of the state and federal instruments.

III. LEGISLATIVE ENACTMENT OF ANNEXATION LAW VIOLATES THE U.S. FIRST AMENDMENT BY ABRIDGING THE RIGHT TO PETITION AND FOURTEENTH AMENDMENT BY DENYING THE EQUAL PROTECTION OF STATUTORY AND CONSTITUTIONAL LAW.

Since 1975, the Iowa legislature has abridged the right to petition the court for redress by withdrawing grounds of action and remedies which originate in the U.S. and State constitutions from court purview. This abrogation of the U.S. First Amendment denies the petitioner the equal protection of law guaranteed by the U.S. Fourteenth Amendment which includes the protections of the First Amendment and elements of the Iowa Constitution. Inclusive of the equal protection of law provided by Iowa Constitution Article III § 30, which forbids local special laws for annexation yet the courts upheld § 368.22 which the Iowa Supreme Court ruled to be a special law in its ruling in *Des Moines v. City, Dev. Bd.*, 633 N.W.2d 305, 311 (Iowa 2001), thus § 368.22 is void under the Iowa constitution and the ruling at issue here is thus coram non judice.

"The very idea of a government, republican in form, implies a right on the part of its citizens to . . . petition for a redress of grievances." *Dejonge v. Oregon*,

299 U.S. 353, 364 (1937). There is more than one way to abridge the right of petition and deny a fair hearing before a tribunal. In the same way that the flow of water can be cut at the source or at the delivery points, or in between, the denial of justice by a tribunal that will 'see, speak to, and hear no petition' is as effective and constitutionally repugnant as a legislated ban on petitions to the court under the First Amendment.

Iowa Code § 17A.19 converts constitutional causes of actions and remedies to statutory provisions. Though § 17A.19 declares: "nothing in this chapter shall abridge or deny to any person or party who is aggrieved or adversely affected by any agency action the right to seek relief from such action in the courts". Iowa Code § 368.22 exclusivity *does* abridge and *does* deny all alternative access for the right of petition by declaring in pertinent part: "The judicial review provisions of this section and chapter § 17A shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of that agency action, or the legality of an election." § 368.22 then withdraws portions of § 17A.19 from purview, including § 17A.19(8).

§ 17A.19(8)(1997) mandates that the court shall reverse, modify, or grant any other appropriate relief from the agency action, equitable or legal and including declaratory relief, if substantial rights of the petitioner have been prejudiced because the agency action is: In violation of constitutional or statutory provisions; In excess of statutory authority; In violation of an agency rule; Made upon unlawful procedure; Affected by other error of law; unsupported by substantial evidence; or unreasonable, arbitrary or

capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

The undeniable effect of barring petitions seeking redress when agency action is in violation of one of the grounds of § 17A.19(8) and barring forms of relief is immunization of state actors for the § 17A.19 conduct excluded from purview because no § 368.22 alternative forum is available as all other Iowans enjoy under § 17A.19(8). [A] cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982); Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right which the state has no power to destroy *Cf. Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 281 U.S. 673, 682 (1930).

The classification of being an annexed rural citizen is not a legislative act, it is the arbitrary act of a non representative city council as shown by the 25 square mile A98-01 annexation and the 14 square mile area of A98-03 two months later. In this way involuntary annexation arbitrarily creates a minority group of annexed citizens who are excluded from the resources of representative government in proceedings against their properties. In this case Polk county officials refused to represent the petitioner in any way while Warren county officials opposed A98-03 until subsequent elections removed the opposing supervisors. The Attorney General is the states counsel against the interests of citizens, and co-conspirator of city and CDB schemes instead of the citizen's counsel against state actions. No countervailing state purpose can qualify prohibiting the annexed rural minority from petitioning for the constitutional and

common law protections enumerated in § 17A.19 or the withdrawal of the guarantees of the U.S. First and Fourteenth amendments simply because the issues will be restricted to illegal and unethical government annexation actions. This Court has recognized that when a state creates a judicial process, it may not grant the benefits of that process to some litigants and deny it to others without implicating the often-intertwined issues of equal protection and due process. *See* generally *M.L.B. v. S.L.J.*, 519 U.S. 102, 120 (1996)

> "[o]nce a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say. Selective exclusions from a public forum may not be based on content alone, and may not be justified by reference to content alone." *Police Dept. of City of Chicago v. Mosley*, 408 US 92, 95-96 (1972).

Ignoring constitutional or statutory provisions, or violation thereof, is an illegitimate government interest, and the exclusivity of § 368.22 leaves no alternative open for citizens seeking redress as shown by *Anderson III*. The § 368.22 prior restraint bars all petitions seeking redress on § 17A.19(8) grounds by removing that spectrum of specific content from court purview for no discernible reason or legitimate government interest.

> [G]overnment may impose reasonable restrictions on the time, place, or manner of speech, any such restrictions must be justified without reference to the content of the speech, narrowly tailored to serve a significant governmental interest, and leave open alternative channels for communica-

tion of the information. *Ward v. Rock Against Racism*, 491 U.S. 781, 791(1989).

> "The First Amendment's ban against Congress 'abridging' freedom of speech, the right peaceably to assemble and to petition, and the 'associational freedom' . . . that goes with those rights create a preserve where the views of the individual are made inviolate." *Baird v. State Bar of Arizona*, 401 U.S. 1, 6 (1971).

The basis of the state court's decision to proceed under § 368.22 despite overbreadth challenge is that the declaratory remedy sought is one which § 368.22 withdraws. The basis of the state court's approval of the city and states conduct was that challenge of the action was barred by § 368.22 and its own erroneous decisional law addressed above. The Courts basis of approving the legality of the election was not that § 368.22 barred review of the legality but that the courts whimsy was that other statutory means should have been pursued, despite the exclusivity of § 368.22. It is irrefutable that the appellant's right to petition for redress has been abridged by the Iowa Legislature in violation of the U.S. First Amendment. It is also undeniable that the Courts have abrogated Fourteenth Amendment guarantee of equal protection of law by ignoring the state and federal constitutions and also picking and choosing the elements of § 368.22 they want to comply with. The precedent of the Iowa Supreme Court acknowledges that § 368.22 is a special law for annexation which renders the statute void under the Iowa Constitution, not merely voidable, and the courts persistent application of the void statute denies the petitioner the equal protection of law guaranteed by the Fourteenth Amendment.

IV. THE EXECUTIVE BRANCH AND MUNICIPAL SUBDIVISIONS OF IOWA GOVERNMENT HAVE ABUSED THE JUDICIAL AND LEGISLATIVE SCHEMES TO DENY THE EQUAL PROTECTION OF LAW AND DUE PROCESS BY CONDUCT THAT BREACHES STATUTORY REQUIREMENTS AND RESTRICTIONS, AS WELL AS CONSTITUTIONAL LIMITATIONS AND ETHICAL NORMS REQUIRED BY STATE AND FEDERAL COURT RULES.

As this case was pendant for rehearing, the Iowa Supreme Court ruled in *Varnum v. Brien*, 763 N.W.2d 862, (Iowa 2009) on equal protection, due process, and uniform operation grounds. It is inconceivable that the unanimous *Varnum* ruling was concurrently delivered by the same court that so casually discarded the rights of annexed citizens. The Iowa Supreme courts' disdain for annexation issues makes municipal annexation resolutions the most potent law of the land which even the supremacy clauses of the state and federal constitutions cannot dent- which is a patently absurd, arbitrary, and void notion for constitutional or statutory creatures.

This court must take note of how far from stare decisis and ethical norms state actors have deviated during the course of this annexation. Not only has the state breached constitutional limitations but it has resorted to misrepresentation, dishonesty, and collusion to prevent the appellant from asserting his liberties and rights to annex his home to Carlisle or seek review of A98-03. With all economic and political advantage on the side of the city and state, it is incomprehensible that government actors, including members of the bar, chose to conspire and lie to fur-

ther annexation goals in abrogation of the petitioners Fourteenth Amendment rights and in transgression of Iowa Rules of Court. Iowa Rule of Professional Conduct 32:8.4(c), which prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. *See Iowa Supreme Ct. Attorney Disciplinary Bd. v. Thompson*, 732 N.W.2d 865, 867 (Iowa 2007) and the federal counterpart provisions.

This city state conspiracy eliminates all traces of a fair hearing before an impartial tribunal and that the Iowa Courts are complicit in the collusion is irrefutable in light of the rulings in this case. The CDB and judicial branch AG (*see* Iowa Constitution Article V, Section 12) cannot adjudicate the petition of its conspiratorial city partner in dishonesty, misdirection and fraud and be expected to do otherwise than find its latter proceedings to be credible and factual: once a liar, always a liar.

The courts ignored proof beyond all doubt that the CDB, city, and Attorney General are dishonest, deceitful, and collusive to accept the state and city arguments as true. The Courts displayed a lack of common sense on preservation issues where it was dismissive of the issues raised by the petitioner throughout A98-03 proceedings, upon which the petitioner requested evidentiary hearing, rehearings, and pursued appeals through the courts which were dismissed on A98-03 exhaustion grounds, which shows a prejudicial bias in favor of state and city actors. It is apparent that dismissal of annexation appeals on exhaustion grounds is simply another tool to quash the rights and protections of rural citizens under color of state law. As noted by the 90 petitions for rehearing in September 2005, the state accepted

equivocal city presentations, discarded U.S. Census data for local conjecture, and accepted city financial claims which all persons knew to be untrue according to published reports and accounts as a matter of public record and common report. The issue here is not the fact finding of the CDB, it is the collusive evasion of fact to adopt presumption and speculation, instead of the truth.

[Due Process], in safeguarding the liberty of the citizen against deprivation through the action of the state, embodies the fundamental conceptions of justice which lie at the base of our civil and political institutions. *Hebert v. Louisiana*, 272 U.S. 312, 316, 317. It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a [deprivation] through the pretense of a trial which, in truth, is but used as a means of depriving a defendant of liberty through a deliberate deception [by the] court and [CDB and AG] by the presentation of testimony known to be perjured. Such a contrivance by a state to procure the [annexation of the appellant's property with interminable taxation and fees] is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation. And the action of administrative officers in the execution of laws may constitute state action within the purview of the Fourteenth Amendment. That amendment governs any action of a state, "whether through its legislature, through its courts, or through its executive or administrative officers." *Carter v. Texas*, 177 U.S. 442, 447; *Rogers v. Alabama*, 192 U.S. 226, 231; *Chicago, Burlington & Quincy R. Co. v. Chicago*, 166 U.S. 226, 233-234. Reasoning from the premise that the petitioner has failed to show a denial of due process in the circumstances set forth in his petition, the city and Attorney Gen-

eral urged that the state was not required to afford any corrective judicial process to remedy the alleged wrong [and the court in sustaining its own erroneous departure from stare decisis absurdly ruled that Due Process does not apply to Iowa annexation.] The argument falls with the premise. *Frank v. Mangum*, 237 U.S. 309, 335; *Moore v. Dempsey*, 261 U.S. 86, 90-91 (*see Mooney v. Holahan*, 294 U.S. 103, 112 (1935)).

UA04-31 was a voluntary annexation of territory integral to that of A98-03 which was opposed by the plaintiff through appeal where it was dismissed on A98-03 exhaustion grounds and standing arguments first raised at the appellate level by the state *Anderson v. CDB*, 723 N.W.2d 449, *unreported* (2006) (*Anderson IV*). The first entry of UA04-31 findings of fact and conclusions of law conveys that the alleged petitioner, "Black Officers Memorial Inc." (henceforth "BOMI") was a property owner and had standing under §368.7 to petition for annexation as do findings 5, 10, 13, the remaining findings are based on this single 'fact'. (App. E, pp. 39a-42a). The conclusions of law 3, 4, 5 and 6 depend upon and buttress the single fabricated 'fact' of BOMI property ownership. (App. E, pp. 42a-43a). Aside from the dates not jiving with the petitions submission, the 'truth' is that BOMI has never owned any part of the five properties annexed by UA04-31 listed in the appendix (App. E, pp. 46a-48a) and had no § 368.7 standing, which the city and state actors knew beyond any doubt before submission and before approval.

The duty of the city council and counsel was to verify that BOMI had § 368.7 standing to petition prior to accepting it. The Duty of the CDB was to verify that BOMI and the city had standing to petition. The duty of the Attorney General as CDB counsel, was to ethi-

cally and legally draft findings of fact and conclusions of law based on fact and law, not deliberate lies and deceitful misdirection. Honesty on the part of any one of these actors would have derailed UA04-31, thus conspiratorial preplanning by Des Moines, the CDB, and AG, as well as cooperation on the part of the Iowa courts, was required to accomplish what was clearly illegal, dishonest, and unethical.

The refusal to address the issue by the A98-03 committee, District Court, Court of Appeals, and Iowa Supreme Court makes them overtly complicit in the dishonesty as anticipated by 42 U.S.C. § 1986. The end result was that while the plaintiff was denied equal protection and uniform operation of law to submit a legal petition with a presumption of validity (Iowa Code § 368.6) to Carlisle, the state agencies and courts participated in and approved an invalid, unethical and illegal annexation long past the 30 day limitation of § 368.7(4).

Furthermore, the collusion, dishonesty, and misrepresentation in A98-03 did not begin or end with UA04-31. In fact, the state allowed about 15 interim annexations of A98-03 territory by at least 25 property owners to Des Moines at the same time annexations to other cities by property owners were barred. While the findings and conclusions of **all** interim annexations were supposedly included as amendments to A98-03 those of UA04-31 were absent. In it's brief on appeal, Des Moines portrayed ignorance of the existence of UA04-31 going so far as stating "whatever that is". The city, CDB and AG attempted to expunge UA04-31 from the record, but overlooked a single mention on a page with a list of interim annexations proving that the record and findings of fact and conclusions of law of A98-03 were

incomplete and had been altered to cover up the conspiracy.

Additionally, in 1990 the cities of Des Moines and Carlisle entered into a § 368.4 moratorium (App. D, p. 36a) based upon the intersection of the Des Moines river and "the future proposed relocated highway 65", which Des Moines, the City of Carlisle, the Attorney General, the Iowa DOT and the CDB admit did not exist at the time it was noticed and heard at the place it was applied to the petitioner 8 years later to dismiss West Carlisle (or 15 years later to approve A98-03).

§ 368.4 was originally enacted in 1963 as § 362.26 (7, 8), which forbid agreeing cities from annexing any of a moratoria territory. In *Anderson v. City Development Board*, 631 N.W.2d 672, 675 (Ia. 2001) the Iowa Supreme court ruled that §368.4 ". . . language is no longer limited to a restriction on the actions of the parties to the agreement, but also requires dismissal of any petitions that would offend the agreement" but here it approved the Des Moines annexation of the same territory that the appellant was denied under the same conditions despite West Carlisle being filed prior to the city's A98-03 and all territory being on Carlisle's side of the 1990 legal location of the line of demarcation of the agreement signed by Des Moines. The basis for this bipolar decision making was the 1990 agreement description that the West Carlisle court called 'ambiguous' but used an un-circulated map to determine the 'area involved in the agreement' and the misrepresentation that no moratorium barred A98-03 in 2005 despite the bar when filed in 1998 (footnote App. B, p. 33a). The division of rural property was applicable only to the local area depicted in the map setting up an Iowa

area in which annexation law operates differently than anywhere else in the state and was thus constitutionally void as applied in this case (*See* Ia. Constitution Art. III § 30 proscribing local **or** special laws for annexation). A local law means one that in fact, even if not in form, is directed only to a specific spot. *Gray v. Taylor*, 227 U.S. 51 (1913)

The appellant requested an evidentiary hearing to expose that A98-03 was barred by the 1990 moratorium and should have been dismissed in 1998 as A98-02 had been. The only place on the planet that Hwy 65 and the Des Moines River intersected in July 1990 was locally known as E14th Street inside the Des Moines city limits as shown on state issued road maps through 1994, placing all rural property subject to annexation on Carlisle's side of the 'line'. All witnesses traced E14th street on maps and connected it to the surveyed point at the county line to complete the written description of the agreement. No authority legally substantiated that this agreement was exempted from the requirements of 1990 § 114A.9 (currently § 355.9) which required a monumented starting point and a description that could be platted or surveyed which only E14th street complied with. What the CDB did do was to abandon the descriptions wording to adopt parol evidence of the city witnesses intent 12 years later to employ an undefined corridor notion to enforce the agreement the CDB admits had no basis in 1990 fact (App. G, pp. 54a-56a). "Substantial evidence cannot be based upon inference drawn from facts which are uncertain or speculative and which raise only conjecture or possibility" Omaha Indian Tribe Treaty of 1854 with *U.S. v. Wilson*, 575 F.2d 620 (Iowa 1978) The findings of this hearing were contested to the District Court where dismissal was based on A98-03 exhaustion

after the city and state stipulated the issues preserved for A98-03 review (App. F, p. 51a). In this case the Court takes part in the prevarication of the CDB by stating that, "**no moratorium agreement currently in place prohibited the annexation**" (App. B, p. 33a). At the time A98-03 was filed the Des Moines Carlisle moratorium mandated dismissal, the 2000 expiration does not validate the void 1998 petition or revoke the city and state stipulation that the issue was preserved for review but does show that the courts freely participated in the equivocation and prevarication of the other state actors.

The CDB corridor crosses the line from arbitrariness to dishonest collusion because it was adopted to allow the city to proceed with A98-03 under the same circumstances that the appellant was denied by the CDB. The corridor also crosses the line from legal to void because it creates a local area where the general chapter 368 and 355 statutes do not apply, rendering the moratorium a local special law for annexation exclusively to Des Moines which is void under Iowa Constitution Article III §30. The only salvation for the moratorium is if all parties were barred, not just the petitioner. This Court has denied Iowa citizens the equal protection of their constitution before in *McCain v. Des Moines*, 174 U.S. 168, 172 (1899)[3] because the McCain litigants delayed their case, here

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[3] Continuing the disregard for law, Des Moines is currently billing for services like sewer, and storm water runoff the petitioner does not receive prior to the filing of this petition despite Iowa Code 368.20 governing annexation stating in pertinent parts: "Upon proper filing and expiration of time for appeal, the . . . boundary adjustment is complete." and "if an appeal to any of the proceedings is pending, completion does not occur until the appeal is decided."

the petitioner has unceasingly asserted his rights. This denial of the equal protection, uniform operation, and due process of law cannot withstand challenge under the 14th Amendment of the U.S. Constitution without the tacit complicity of the Iowa courts in the unconstitutional scheme.

A § 368.4 moratorium or annexation pursuant to § 368.7 or § 368.11 as well as limitations contained in § 368.11 and § 368.17 which permits partial service provision only during the time taxes are abated, among others, are protections of law that have been denied the petitioner. It is simple arithmetic when two or more parties come within the sphere of operation of a law and only one party is excluded from the operation of law by extra-statutory scheming, then that party has not received the equal protection of law.

In the case at bar, the petitioner has been denied annexation pursuant to § 368.7 and § 368.11 at the same time that Des Moines and at least 25 individuals have benefited from extralegal operation of those same statutes under CDB and AG misrepresentation. At the same time the courts have required accurate legal descriptions in notices and the legislature mandated precise legal descriptions in Iowa Code § 355.9 the state has allowed speculation and recollection to displace 'legal' in this annexation.

The intertwining of Due Process and equal protection protects the right to invoke the processes created by state law at the same time it protects parties by requiring that those processes be followed by all parties, including the government. Either the Fourteenth amendment is part of the supreme law of the United States or it is simply a notion that can be ignored by the states through legislated or decisional

law and denied under color of those state laws. Under our Constitution and national conscience our country waged war on Iraq when it involuntarily annexed Kuwait in 1990 but in Iowa, without this courts intercession, not even the constitution ensured that Des Moines involuntary annexation of the petitioners home followed the law or ethics the Fourteenth Amendment implies and guarantees or that he received the protection of law or any notion of justice.

Plea:

Petitioner respectfully submits that this Court should accept review of this case in order to address significant issues of the U.S. First and Fourteenth Amendments abrogation by Iowa, as well as multiple violations of 42 U.S.C. §1983, §1985, and §1986 by Iowa government entities under color of state law.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court grant the petition for writ of certiorari.

Respectfully submitted,

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August __, 2009

APPENDIX

APPENDIX A

IN THE COURT OF APPEALS OF IOWA

No. 8-1010/07-1105
Filed March 26, 2009

JOHN ANDERSON,
Petitioner-Appellant,

vs.

THE CITY DEVELOPMENT BOARD OF THE STATE OF IOWA and THE CITY OF DES MOINES,
Respondents-Appellees.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert (judicial review) and DJ. Stovall (motion to dismiss), Judges.

John Anderson appeals from the ruling of the district court affirming a decision by the City Development Board approving an involuntary annexation and from the dismissal of his request for declaratory relief, which he had joined with his petition for judicial review, AFFIRMED.

MAHAN, P.J.

John Anderson challenges the City of Des Moines's involuntary annexation of land by a petition that was originally filed in 1998. It is clear Anderson vehemently opposes the annexation of his property by the City of Des Moines (city). However, involuntary annexation is authorized by statute, and our role is limited to reviewing the propriety of the annexation

under the statutory scheme provided. After a full review of the record and the applicable law, we affirm.

I. Background,

This appeal follows several earlier appeals of relevance, which we summarize here:

(1) In *Dunn* v. *City Development Board,* 623 N.W.2d 820, 822-25 (Iowa 2001), which involved the same involuntary annexation petition, the supreme court outlined the involuntary annexation process authorized by Iowa Code chapter 36B (1997). The appellants attempted to have the involuntary annexation petition dismissed for lack of accurate legal description. The supreme court found the appeal premature, noting:

> The petitioners have means of challenging the annexation within the processes of chapter 368. They may attack the merits of the proposal by appearing at the mandatory public hearing and furnishing briefs in support of their position prior to the time any petition is approved. The committee may, under section 368.18, remedy defects in the petition's legal description. Eventually, if the committee approves the petition, an election must be held, and the plaintiffs will have an opportunity to attack the proposal at that level. If the petitioners fail to. obtain relief through the administrative proceeding they will then have the right to seek Judicial review.

Dunn 623 N.W.2d at 825.

The parties to the involuntary annexation have, in fact, utilized each of the statutory means noted by the court. The objectors, including Anderson, have participated al the mandatory public hearings and

furnished briefs. The committee has amended the legal description pursuant to section 368.18, which is challenged here by Anderson, The committee eventually approved the petition and an election was held in November 2005. Anderson attacked the propriety of the election and sought judicial review. We will further address those challenges later.

(2) In an attempt to avoid the involuntary annexation by the city, Anderson and other citizens of the unincorporated territory of "West Carlisle" attempted to be voluntarily annexed by the City of Carlisle. *Anderson v. City Development Board*, 631 N.W.2d 671, 672 (Iowa 2001) (*Anderson I*), dealt with the question of whether the annexation moratorium agreement between Carlisle and the city could preclude the petition for voluntary annexation. The City Development Board (CDB) concluded the petition was precluded, but on judicial review the district court reversed the dismissal. *Anderson I*, 631 N.W.2d at 672. The Supreme court reversed and remanded for reinstatement of the petition's dismissal, concluding Iowa Code section 368.4 requires the dismissal of a "petition or plan which violates the terms" of a valid MC moratorium agreement *Id.* at 675.

In *Anderson* I, the supreme court also addressed several alleged procedural errors raised by Anderson, as well as his claims that the moratorium agreement violated the federal equal protection and due process rights of the citizens of West Carlisle. The procedural errors alleged by Anderson included (1) "a typographical error in the description of land subject to the moratorium agreement," (2) "inadequacy of the description of the affected land," and (3) "failure to provide notice to the Board as required to effectuate

the moratorium agreement. *Id.* at 675. The supreme court noted that [s]ubstantial compliance with prescribed procedural law is sufficient," *id.*, and rejected each of these claims. *Id.* at 676.

The court also rejected Anderson's constitutional claims because: (1) Those affected by the moratorium agreement were provided notice and a hearing, and (2) Annexation law is governed by statute and any right section 368.11 provides for involuntary annexations does not stem from constitutional property rights." *Id.*

(3) The 1998 involuntary annexation action was again before the appellate court in *City of Des Moines v. City Development Board,* 633 N.W.2d 305 (Iowa 2001). In this appeal, the city challenged the CDB's stay of the involuntary annexation proceedings pending the outcome of the *Dunn* and *Anderson I* appeals. See *City of Des Moines,* 633 N.W.2d at 308. After outlining the history of the annexation proceedings, the supreme court addressed the question of whether there was authority to decide the appeal. *Id.* at 309. The court discussed the time limits for review under chapters 17A and 368, *id.* at 309-11, and dismissed the appeal as untimely. *Id.* at 312.

(4) While *Anderson I* was pending on appeal, Anderson filed a suit against the CDB and the attorney general (AG) for declaratory judgment and mandamus, claiming the moratorium agreement was not properly enacted and was therefore invalid, that the CDB applied the annexation laws incorrectly, and that the CDB and the AG violated the constitutional rights of Iowa citizens in Interpreting and enforcing annexation statutes. *See Anderson v. City Dev. Bd.*, No. 01-1242 (Iowa Feb. 26, 2003) *(Anderson II)*. The

supreme court rejected each of Anderson's challenges on issue preclusion principles because [a]lthough cloaked in slightly different language, these claims are identical to those concluded in (*Anderson I*). *Id* The supreme court therefore affirmed the district court's dismissal of the suit.

(5) In *Anderson v. City Development* Board, No. 05-0577 at 3 (Iowa Ct, App. June 28, 2006) (*Anderson III*) this court rejected Anderson's appeal from the district court's dismissal of his challenge to a voluntary annexation petition because he was not a resident or a property owner in the territory that was the subject of the voluntary annexation.

As evidenced by the numerous appeals, the petition for involuntary annexation has followed a rather tortured path. While the above-noted appeals were being pursued, the city and Warren County (in which lies some of the territory subject to the involuntary annexation petition) entered into mediation to attempt to resolve Warren County's opposition to the annexation. In April 2003 the CDB granted a motion to continue the public hearing (then scheduled for May 2003) to allow additional time for mediation. Regular reports from the city and Warren County were given to the CDB through December 2004.

The CDB rescheduled the involuntary annexation petition for public healing for June 2005. The hearing began on June 7, 2005, before the city development committee. After the committee chair outlined the procedure that would be followed at the hearing, the city noted that, because the petition was filed in 1998, about twenty to twenty-five percent of the original area subject to involuntary annexation had been voluntarily annexed; Warren County had withdrawn its objections to the annexation; the city

and Warren County had entered into an agreement covering services and other matters; and the city, Warren County and the City of Indianola had entered Into an annexation moratorium. The city also noted there was a pending motion to amend the legal description of the original petition to amend the voluntarily annexed areas and to correct "a couple of minor scrivener errors."

A participant presented a resolution to postpone the hearing until the amended petition was available, citing section 368.18. The city resisted further continuance, arguing that the proposed amendments to the 1998 petition did not substantially amend the petition and, consequently, section 368.18 did not require a continuance.

The committee accepted exhibits and then asked the city for updated information concerning the city's financial capacity to provide services and cost estimates. The public hearing was rescheduled to allow the city to compile the information requested, although the city noted that the proper inquiry must focus on the time frame when the original petition was filed,

On August 18, 2005, the public hearing was reconvened. The city presented additional exhibits containing the updated financial and cost information. The assistant city manager testified, as did the city's research and budget officer and the city's community development director, about the services offered by the city and not offered by the county and about the city's ability to serve the area to be annexed. Members of the committee and persons at the meeting were allowed to ask questions of the witnesses. Public comments were received from numerous participants, including Anderson.

Anderson—whose comments were reduced to writing and encompassed fifty-two, single-spaced pages—argued that the statutory annexation scheme violated home rule and constitutional principles. He argued that statutory scheme was void on several grounds, including overbreadth, vagueness and preemption. He complained about the application of the principle of "substantial compliance" noted in the *Anderson I* decision. He argued the amended petition violated notice requirements. He also attacked individual statements in the petition, complaining that the city was not able to provide services he was not already enjoying and was not financially able to provide the services it claimed it could. He argued annexation would not promote orderly growth, would increase costs of future public services, was not in the public interest, and would not provide an increased level of services to the area to be annexed.

The committee scheduled a decisional meeting for August 30, 2005, at which time it would rule on the motion to amend. Briefs were to be received within ten days.

On September 1, 2005, the committee issued its findings of fact, conclusions of law, and determination. The committee approved the motion to amend, determining it did not substantially amend the petition. The committee made specific findings with respect to the city's ability to provide substantial municipal services and benefits not previously enjoyed in the area to be annexed, that the motive of the city was not solely to increase tax revenues, that the proposed annexation was in the public interest, and that the territory adjoins the city. The committee concluded it had jurisdiction, the annexation was not barred by statute, and the annexation was in the

public's interest. The petition was approved and the CDB directed that a special election be held.

Anderson and several others filed applications for rehearing, which were denied by the CDB at its September 29, 2005 meeting. A written decision denying the applications was issued on October 4, 2005.

On November 2, 2005, Anderson filed a "Petition for Judicial Review and Declaratory Relief" in which he asked that the statutory scheme for involuntary annexation be declared void on the bases of vagueness, overbreadth, constitutional and statutory preemption, and lack of uniformity. He asked also that the application of substantial compliance be declared void as unconstitutional and in violation of home rule authority. He argued the process was procedurally flawed and the decision was without substantial supporting evidence and arbitrary and unreasonable. The CDB moved to dismiss that portion of the petition which sought declaratory relief, arguing it could not be joined with a petition for judicial review. The district court agreed and dismissed the declaratory judgment portion of the petition.

In its final ruling, the district court properly noted that judicial review of administrative action is limited to questions considered by the agency[1] and adequately supported by legal authority.[2] Of the

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[1] "It is well-settled that judicial review of administrative action is limited to questions considered by the agency." *Anderson I*, 631 N.W.2d at 673.

[2] *See City of Asbury v. City Dev. Bd.*, 723 N.W.2d 188, 198 (Iowa 2006) (finding city waived its argument when it failed to

"multitude of issues" asserted by Anderson's petition, the district court found that many issues had not been raised below and that others were not adequately supported by legal authority. The court thus concluded that only three issues were subject to its review: whether the petition for involuntary annexation meets the pertinent statutory requirements; whether the respondents were correct in allowing the petition to be amended; and whether the annexation was supported by substantial evidence.

The district court found the petition for involuntary annexation was properly approved by the CDB. The court ruled any alleged deficiencies in the original petition could be cured by amendment and the amendment allowed by the CDB was not "substantial" which would trigger the requirement of continuance and additional notice under section 368.18. Finally, the district circuit found the annexation was supported by not "merely substantial but overwhelming evidence, and was consistent with the applicable facts and law. The decision was neither arbitrary nor unreasonable,"

Anderson appeals.[3]

II. Standard of Review.

Our review of a city development committee's decision to deny or approve a petition for incorporation is limited generally under Iowa Code section

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articulate this claim in its brief and failed to "address any specific application" to its case).

[3] Anderson again raises a multitude of issues; however, we—like the district court—will address only those properly preserved and supported.

17A.19 and specifically under section 368.22. Section 368.22 provides in pertinent part that

> A city, or a resident or property owner in the territory or city involved may appeal a decision of the board or committee, or the legality of an election, to the district court. . . .
>
> The Judicial review provisions of this section and chapter 17A shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of that agency action. The court's review on appeal of a decision is limited to questions relating to jurisdiction, regularity of proceedings, and whether the decision appealed from is arbitrary, unreasonable, or without substantial supporting evidence. The court may reverse and remand a decision of a . . . committee, with appropriate directions.

Section 368.22 then states that certain portions of section 17A.19's general judicial review provisions are not applicable to chapter 368 actions. *See Citizens of Rising Sun v. Rising Sun City Dev Comm.*, 528 N.W.2d 597, 599 (Iowa 1995).

III. Discussion.

We have thoroughly reviewed the briefs and the record in this case. The district court's ruling on Anderson's petition for judicial review is well reasoned and fully supported by the record. We adopt its reasoning as our own and for all the reasons stated therein, we affirm. *See* Iowa Ct. R. 21.29(1)(d).

We conclude only two issues warrant further discussion. First, whether the committee erred in concluding there was not "substantial" amendment triggering a continuance under section 368.18.

Second, whether the district court erred in dismissing Anderson's request for declaratory ruling.

Our review is guided by the following general principles:

> The law of annexation is purely statutory. The legislature prescribes the conditions of, and procedures for, annexation. Nonetheless, a failure to literally comply with every word of our annexation statutes is not fatal. Substantial compliance is sufficient, and legislation establishing the method by which municipal corporate boundaries may be extended is to be liberally construed in favor of the public.

Pruss v. Cedar Rapids/Hiawatha Annexation Special Local Comm., 687 N.W.2d 275, 279-80 (Iowa 2004) (internal quotations omitted).

A. Amendment of annexation petition. Section 368.18 provides:

> The committee may amend a petition or plan. *If* a *petition or plan is substantially amended* the committee shall continue the hearing to a later date and serve and publish a notice describing the amended petition or plan, as required in section 368.15.

(Emphasis added.) This provision clearly authorizes amendment to an annexation petition. *See Dunn*, 623 N.W.2d at 825 (noting that the "committee may under section 368.18, remedy defects in the petition's legal description"). However, if the amendment changes the petition "substantially, hearing on the petition must be continued and new notice must be given to affected parties.

The committee concluded the proposed amendment did not "substantially" amend the 1998 annexation petition, noting that the primary reason for the continuance and additional notice is to ensure interested individuals and entities have a fair opportunity to review and respond to the information being presented.

There are no decided cases addressing this precise question under section 368.18. However, our supreme court has discussed what constitutes a "substantial amendment" under an analogous provision in *Smith v. City of Fort Dodge*, 160 N.W.2d 492, 497-98 (Iowa 1988):

> In reading a statute we are required to give words of common usage their commonly understood meaning unless it is clear from a reading of the statute that a different meaning was intended, or unless such construction would defeat the manifest intent of the legislature.
>
> . . . .
>
> Specifically, we seek the Interpretation of the words 'substantial amendment' in [Iowa Code section 373.19 (1966)]. A careful review of our case law reveals that we have never had occasion to define 'substantial', but have attempted to define 'substantially.' Webster defines 'substantial' as follows: 3. That is of moment; essential material . . . . 6. That is such in substance or in the main . . . . 10. Of or pertaining to the substance or main part of anything.'
>
> It has also been said the word 'substantial' is a relative and not exact term subject to a rule of thumb. It is susceptible of different meanings according to the circumstances of its use. In

> considering the word, *It must be examined in its relation and context, and its meaning gauged by all the surrounding circumstances.*
>
> The circumstances herein that must be considered, among others, are the size of the tract to be rezoned, the new use for which the property is rezoned, and the effect upon the community as a whole. We have carefully examined these and other relevant circumstances revealed in this brief record.

(Internal citations omitted, emphasis added.) In *Montgomery Properties Corp. v, Economy Forms Corp.,* 305 N.W.2d 470, 477 (Iowa 1981), the supreme court acknowledged its earlier discussion and re-emphasized that "'substantial' is a relative and not an exact term subject to a rule of thumb, that it was susceptible of different meanings according to the circumstances of its use.

In section 368,18, if an annexation petition is "substantially amended" then a continuance and new notice is required. We agree with the committee that the primary purpose of the section is to ensure that interested individuals and entities have a fair opportunity to review and respond to the information in an amended petition. We thus consider the context and the circumstances of the amendment to the annexation petition.

The original petition filed in June 1998 involved the annexation of approximately 8890 acres. The amendment was confined to the legal description of the area to be annexed. The amended petition removed acres that had been voluntarily annexed between the original petition in 1998 and the 2005 hearing: the parties affected by the voluntary

annexations were aware of those proceedings. The amendment removed an area that was the subject of an agreement between the city and Warren County and it corrected scrivener errors. No territory was added. Under these circumstances, we conclude the committee did not err in determining the petition was not "substantially amended."

B. Declaratory Relief. Anderson raises several allegations of procedural deficiencies related to the special election approving the annexation proposal. For example, he alleges violations of section 49.23 (change of polling places), 49.21 (related to accessibility of polling place), and 49.23 (relating to notification of change of polling place). He initially raised these challenges in his a petition for judicial review and asked that the election be declared void. The district court granted the motion to dismiss the declaratory portion of the petition for judicial review.

The CDB and the city contend the petition was not the appropriate vehicle to address Anderson's challenges. They assert the allegations of procedural irregularity should have been made in a separate election contest under Iowa Code chapters 57 and 62. Anderson responds that he is entitled to challenge the "legality of an election' under section 368.22.

While section 368.22 does authorize an appeal of "the legality of an election," we find the matters raised by Anderson cannot be addressed in this petition for judicial review. Simply stated, the jurisdiction of the district court and this court is appellate in nature and here there is no election contest from which to appeal.[4]

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[4] We believe the challenges raised by Anderson should first have been directed to the county commissioner of elections. *See*

The respondents to this petition are the CDB and the city. We conclude our review is limited to matters raised in the proceedings before the CDB and concerning the petition for annexation, including the CDB's directing an election. Anderson does not challenge the authority of the CDB to order the election or any other CDB or city action related to election. We find no error in the district court's dismissal of Anderson's request for declaratory relief. We affirm.

AFFIRMED.

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generally Iowa Code § 47.2 (county commissioner shall conduct election); chapter 57 (contesting elections); *see also* § 57.7 Contest court for contest of public measure."). An appeal from an adverse ruling there might have provided appellate jurisdiction in the district court under section 368.22.

APPENDIX B

IN THE IOWA DISTRICT COURT
FOR POLK COUNTY

Case No. CV 5912

JOHN FRANCIS ANDERSON,
Petitioner,

vs.

THE IOWA CITY DEVELOPMENT BOARD,
Respondent,

And

THE CITY OF DES MOINES,
Intervenor/Respondent.

RULING ON PETITION FOR JUDICIAL REVIEW

This is a contested judicial review proceeding in which the petitioner challenges decision of the own City Development Board approving a petition for involuntary annexation filed by the city of Des Moines in case number A98-03. This decision was handed down on September 1, 2005 and a petition for rehearing was denied September 29, 2005. Along the Way, the case has progressed through the administrative system for just over seven years, spawned numerous parallel proceedings and appeals,[1] and

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[1] The appellant decisions that have resulted from these annexation efforts include *Dunn v. City Development Board*, 623 N.W.2d 820. (Iowa. 2001) *Anderson v. City v Development Board*, 631 N.W.2d 671 (Iowa 2001) (*Anderson I*), city of *Des*

generated a certified record that has encompassed 27 exhibits, 159 formal docket entries and is now housed in a banker's box.

Because the court does not wish to further burden an already overburdened record, it incorporate by reference the timeline significant procedural event (and corresponding references to the certified record) found at pages 6 through 12 of the brief filed by the respondent. The petitioner has identified a multitude of issues he believes have been preserved for judicial review, and has listed those issues pages 5 through 11 of his brief. The city of Des Moines has challenged whether all of these issues have been properly preserved, so this will be the focus of the court's initial analysis.

Judicial review of administrative action is limited to questions considered by the agency, *Pruss v. Cedar Rapids/Hiawatha Annexation Special Local Committee* 687 N.W. 2d 275, 285 (Iowa 2004. and any issue raised for the first before the district court is not preserved for judicial review. *Peterson v. Iowa Dept. of Transp.* 508 N.W.2d 689, 642 (Iowa 1993). This rule of error preservation pertains even to issues of constitutional dimension. *Garwick v. Iowa Dept of Transp Motor Vehicle Div.*, 611 N.W.2d 286, 288-89 (Iowa 2000).

Tied into this rule is the notion that a party must not only preserve issues for review, but must also cite legal authority in support of them or risk having

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Moines v. City Development Board, 633 N.W.2d 305 (Iowa 2001), *Anderson v City Development Board* 660 N.W.2d 321 (table), 2003 WL 465560. (Iowa S.Ct., Case. No 01-1242 filed February 26., 2003) (*Anderson II*) and *Anderson v. City Development Board* 723 N.W 2d 449(table). 2006 WL 1751243 (Iowa Ct.App Case No. 05-0577, filed June 28, 2006) (*Anderson III*).

those issues waived for purpose of judicial review. *See* Iowa R.App.P. 6, 14(1)(c); *City of Asbury v. Iowa City Development* Board. 723 N.W.2d 188, 198 (Iowa 2006). The purpose of this rule is to prevent the court from assuming role of a partisan and undertaking a party's research and advocacy. *State v. Stoen*, 596 N.W.2d 504, 507 (Iowa 1999)

The fact that the petitioner is unrepresented by counsel does not excuse him from either of these rules, The court does not utilize a deferential standard when persons choose to represent themselves. *Hays v. Hays,* 612 N.W.2d 817, 819 (Iowa Ct. App. 2000);

> The law does not judge by two standards one for lawyers and another for lay persons. Rather, all are with equal competence. If lay persons choose to proceed pro se, they do so at their own risk.

Kubik v. Burk 540 N.W.2d 60, 63 (Iowa Ct., App 1995) (citations omitted), As measured against these standards, and having carefully reviewed the petitioner's brief in comparison to the certified record (most notably his own filing located at Item 139B of the record), the court concludes that the following issues were raised before the agency and initially preserved 1) whether the statutes in question (Iowa Code §§368.4, 368.11, 368.19 and 368.22) are unconstitutional as non-uniform, overly broad, vague and preempted; 2) whether the petitioner' procedural due process rights have been violated; 3) whether his substantive due process rights have been violated; 4) whether the petition for involuntary annexation meets the requirements of Iowa Code §§368.11 and 368.12; 5) whether the respondent was correct in allowing the petition to be amended; and 6) whether the respondent's ultimate decision was supported by substantial evidence. Of these issues, the first three

have been waived as a result of the petitioner's inability to cite any meaningful authority beyond the occasional generic reference to the Constitution or the phrase "due process."[2] The remaining issues will be addressed by the court in this ruling.

This court's role in reviewing the respondent's decision is governed exclusively by portions of chapter 17A of the Iowa Code and Iowa Code §368.22 *City of Hiawatha v. City Development Board*, 609 N.W.2d 496, 498 (Iowa 2000). The court is limited in its review "to questions relating to jurisdiction regularity of proceedings, and whether the decision appealed from is arbitrary, unreasonable, or without substantial supporting evidence." Iowa Code §368.22 (1997)[3]. The decision is supported by substantial evidence "[i]f a reasonable person would find the evidence adequate to reach [such] a decision . . . . ." *Pruss*, 687 N.W.2d at 284 (quoting *City of Des Moines Development Board*, 473 N.W.2d 197, 199 (Iowa 1991)).

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[2] Even if the petitioner's constitutional argument had not been waived, they are clearly without merit. As he was reminded in a prior ruling, *Anderson I*. 631 N.W.2d at 676, 'The United Supreme Court has stated that Municipal boundaries may be. altered without the consent of the inhabitants of the territory affected and 'nothing' in the Federal Constitution is to contrary . . . Although the inhabitants and properly owner's may . . . suffer it inconvenience . . . there is nothing in the Federal Constitution which protects them from these injurious consequences. (quoting *Hunter v. City of Pittsburgh* .207 U.S. 161, 179 28 S.Ct., 40. 46-47,. 52 L.Ed.2d 151. 159 (1907)).

[3] As the respondent correctly points out in its brief the versions of both chapter 17A and §368.22 applicable to this proceeding are those in effect at the time it was commenced in 1998. This is especially important to the applicability of Chapter 17A, as the extensive amendments to that chapter relied upon by the petitioner are not to agency proceedings commenced prior to July 1, 1999, 1998 Iowa Acts , ch. 1202, §46.

As in any judicial review proceeding, this court is to give considerable deference to the respondent's findings of fact, if they are supported by substantial evidence:

> Substantial evidence is not absent simply because it is possible to draw different conclusions from the same evidence. The focus of the judicial inquiry is whether the evidence is sufficient to support the decision made, not whether it is sufficient to support the decision not made. A reviewing court may interfere with the agency's findings only if the evidence is uncontradicted and reasonable minds could not draw different inferences. Legal error is present under the substantial evidence analysis when an agency reaches a conclusion based on uncontroverted evidence which is contrary to the conclusion reasonable minds would reach. If evidence is in conflict, however the reviewing court has no room to interfere.

Riley v. Oscar Mayer Foods Corp., 532 N.W.2d 489, 491-92 (Iowa Ct. App. 1995) (Citations omitted). The agency's determination of a question of law is given limited deference (especially when within the agency's expertise), but issues of law are to be determined by the court. *Madrid Home for the Aging v Iowa Dept, of Human Service*, 557N.W.2d 507, 510-11 (Iowa 1996). While administrative decisions are ordinarily the prerogative of agencies, the final interpretation of the law rests with the court on judicial review. *Midwest Automotives III v. Iowa Department of Transp.* 646 N.W.2d 417 422 (Iowa 2002), It is the petitioner's burden to prove that the issues raised in his petition for judicial review warrant a reversal oldie respon-

dent's decision. *Busing v. Iowa Dept. of Transp., Motor Vehicle Div.* 455 N.W.2d 921, 922 (Iowa 1990).

Approval of petition. The petitioner contends that the petition for involuntary annexation should not have been approved, in that it is deficient in the following respects; 1) the Legal description for the proposed annexation was inaccurate; *2)* the proposal regarding shared roads was inadequate: 3) the proposed annexation created islands; and 4) the statutory notice prior to the required public hearing was insufficient There are three statutes that govern the issue of the approval of a petition for involuntary annexation: Iowa Code §§368.4, 368.11 and 368.12 (1997).

As applied to the issues presented for review, the pertinent portions of Iowa Code §368.11 are as follows:

> A petition for . . . boundary adjustment may be filed with the board by a city council, a county board or supervisor, a regional planning authority, or five percent of the registered voters of a city or territory involved in the proposal. Notice of the filling including a copy of the petition, must be served upon the council of each city for which a . . . boundary adjustment is proposed, the board of supervisors for each county which contains a portion of a . . . territory to be . . . annexed . . . and any regional planning authority for the area involved.
>
> Within ninety days of receipt of a petition, the board shall initiate appropriate proceedings or dismiss the petition . . . .
>
> The petition must include substantially the following information as applicable:

1. A general statement o the proposal.
2. A map of the territory, city or cities involved.

* * *

12. Plans shall include a formal agreement between affected municipal corporations and counties for the maintenance, improvement and traffic control of any shared roads involved in a[] boundary adjustment.

At least ten days before a petition for involuntary annexation is filed as provided in this section, the petitioner shall make its intention known by sending a letter of intent by certified mail to the council of each city whose urbanized area contains a portion of the territory, the board of supervisors of each country which contains a portion of the territory, the regional planning authority of the territory involved, each affected public utility, and to each properly owners listed in the petition . . . .

The ability of the respondent to dismiss a petition is governed by Iowa Code §368.12:

> The board may dismiss a petition only if it finds the petition does not meet the requirements of [chapter 368], or that substantially the same . . . boundary adjustment has been disapproved by a committee formed to consider the proposal, or by the voters, with in the two years prior to the date the petition is filed with the board, or that the territory to be annexed, or that territory, has been voluntarily annexed under Section 368.7.

In addition, the respondent is empowered to dismiss a petition for involuntary annexation that violates the terms of a valid moratorium agreement

between cities. Iowa Code §368.4 (1997). There is no contention that the territory sought be annexed had been included in a prior unsuccessful development action or had been voluntarily annexed As a result, the scope of the respondent's action when faced with the petition at issue was limited to determining whether the petition met the requirement of chapter 368 or violated the terms of a valid moratorium agreement. The case law is equally clear that the standard by which the respondent's actions are measured is that of substantial, not strict, compliance. *Asbury*, 723 N.W.2d at 193 *see also Anderson I* 631 N.W.2d at 675.

The petitioner contends the legal description contained in the petition is fatally flawed in three respects: it is inconsistent with his interpretation of the Des Moines-Carlisle moratorium agreement; it includes property already annexed into the city and is ambiguous in two other places. As to the first contention, the petitioner claims that the reference to "Iowa Highway 65" in the designated line of demarcation contained in the moratorium agreement is E. 14th Street in the city of Des Moines (the actual location of Highway 65 at the time the agreement was executed in 1990), and that as a result the proposed annexation was in violation or that agreement.

The complete reference in the agreement to Highway 65 is "the center line of the proposed future Relocated Iowa Highway 65." Certified Record, item 2. Following an evidentiary hearing held at the petitioner's request on January 17, 2002, it was concluded that the roadway in question was not E. 14th Street, but rather die corridor for the future location of relocated Highway 65 located east of Des Moines. Although, as the petitioner argued, it was impossible

to specify the center line of the as-of-yet uncompleted highway, the evidence was overwhelming that the intent of the parties to the moratorium agreement was that the new highway was the focus of the line or demarcation. Accordingly, the proposed annexation was found not to be in violation of that agreement. Certified Record. Items 84-87,

The respondent's decision in this regard was not only supported by substantial evidence, but has also been approved by the Iowa Supreme Court in a decision arising out of a related proceeding involving these same parties, *Anderson I*. In that decision which dealt with the efforts of the petitioner to have property involuntarily annexed to the city of Carlisle, the court found that the wording of the moratorium agreement (as interpreted by the respondent) prohibited such annexation into Carlisle:

> [T]he moratorium agreement itself did provide a somewhat ambiguous description of the land in question., However, when combined with the maps provided, such a description clearly alerts those in the affected area that their land falls within the agreement. In effect Anderson argues the description was insufficient. We have said that insufficiency is not enough to invalidate the agreement Rather, a showing that the description is in fact incorrect is required.

Anderson I 631 N.W.2d at 676 (citations omitted). The respondent was correct in determining the proposed annexation in question did not violate the terms of the Des Moines-Carlisle moratorium agreement.

In order to determine whether the remaining deficiencies in the legal description are sufficient to prevent the petition from passing muster as measured

by the requirement of substantial compliance, the court looks to the impact of the error on the proceedings. *Gorman v. City Development Board*. 565 N.W.2d 607, 610 (Iowa 1997). If the error is substantial and prevents the required parties from receiving notice, the petition will be dismissed. *Id*. at 611 (citations omitted) (two-thirds of property intended to be annexed left out in erroneous description and 40 acres not intended to be annexed included; approval of petition for voluntary annexation reversed). If the misdescription is not substantial and does not result in a lack of notice, it will not serve as a fatal impediment to the approval of the petition. *Id*: *Incorporated Town of Windsor Heights v Colby,* 249 Iowa 802, 806-7, 89N.W.2d 157, 159 (1958)

In the present case, the errors in the legal description did not result in a lack of notice since it resulted in a small addition of property to the claimed territory to be annexed. The fact that the erroneous description contained property already within the city of Des Moines and created in island, while potentially fatal to the approval of the proposal under §368.16, can be cured at the stage the petition is subject to approval by means of amendment under Iowa Code §368.18 (1997) ("The committee May amend a petition or plans"); *see also Dunn* 623 N.W.2d at 825 ("[t]he Committee may, under section 368.18, remedy defects in the petition's legal description."), The issue of whether the amendment to the petition in this and other regards was properly entertained by the respondent will he dealt with in a later Section of this ruling. For now, however this court concludes that the respondent was correct in the manner it dealt with the claimed deficiencies in the initial description Contained in the petition.

As to the issue regarding shared roads, the statute specifying the content of a petition for involuntary annexation states, "Plans shall include a formal agreement between affected municipal corporations and counties for the maintenance, improvement and traffic control of any shared roads involved in an incorporation or boundary adjustment." Iowa Code §368.11(12) (1997). The petition in question referenced a number of existing agreements with the State of Iowa and Warren County that would be modified or amended to reflect changes that would result should annexation he approved. Certified Record, item 1, page 94; Item 1E. The petitioner herein argues that this is deficient, in that only proposed agreements were referenced, not the actual agreements.

Such an agreement is illogical and ultimately unworkable. In essence, the petitioner contends that the city of Des Moines should enter into contingent or advisory agreements with other governmental entities in anticipation of a hoped-for annexation. The court construes the statutory language in question as only requiring a plan to address the eventual need for shared road agreements, should annexation become a reality. *See also* 263 IAC 2.3(14) (1998) (petition required to include a "proposed formal agreement"). The petition has more than substantially complied with the requirement for shared road agreements. The petitioner's argument on this issue is without merit.

The petitioner's concerns regarding the creation of islands in the proposed legal description for the annexation territory are resolved through the amendment process outlined in an earlier part of this ruling. To the extent islands as defined in Iowa Code §368.1(10) (1997) were created as a result of the

inaccurate legal description contained in the petition, that error could be cured by amending the petition prior to the approval of the overall proposal. If the proposal as amended were to still contain islands, then it could not be approved. Iowa Code §368.17(7) (1997). The court will deal with that amendment process in a later section of this rating. To the degree the petitioner argues a statutory inadequacy in the petition as a result of the creation of islands, that argument was properly rejected by the respondent.

Lastly as concerns the approval of the petition, the petitioner contends that inadequate notice was sent out to the affected property owlets, in violation of the next to last unnumbered paragraph of Iowa Code §368.11; Specifically, a handful of affected property owners objected to the manner in which they were notified. In response, the city outlined in painstaking detail its methodology of notifying the property owners who are entitled to such notice. Certified Record, Item 13A, pages 1-3. Of the four property owners who objected, three actually received notice, and the fourth (Thelma Stark) received notice at the required Last known address, and her co-owner was actually served with notice. *Id.* at page 3. Therefore, the respondent correctly concluded that the city of Des Moines had given proper notice. Certified Record, Item 30 Page 3.

The court has addressed all the concerns raised by the petitioner regarding the content of the petition for involuntary annexation, and found them to he wanting as more specifically set forth in this ruling The petition was properly approved by the respondent.

Process of amending the petition. The court has already determined that many of the deficiencies in the initial version of the petition could be cured by

amendment pursuant to Iowa Code §368.18. The petitioner argues that the process by which the petition was in fact amended was violative of this code section, and as a result mandates a reversal of the respondent's decision. A motion to amend the petition was initially filed on August 5, 1998, and denied on August 27, 1998. Certified Record, items 12 and 22. A second motion to allow amendment to the petition was filed as one of the exhibits received into evidence at the June 7, 2005 public hearing regarding the merits of the annexation proposal. The second motion clarified the extent of the property sought to be involuntarily annexed by removing property which had been voluntarily annexed in the interim period and other property that the city agreed to take out of the proposal. Certified Record, Item 128A, tab 7. As the motion made clear, these amendments remove territory from the Annexation Area and do not add any new territory to the Annexation Area." *Id.*, at page 1. Likewise, the motion clarified that the focus of the proposal was the city's ability to provide services and benefits to the revised area. *Id.* at page 9. The second motion to amend was approved by the respondent in its September 1, 2005 decision, Certified Record, Item 147, page 9, item 21.

The only possible objection to the way in which the second amendment was handled is whether it would require additional hearings and notices, as required by Iowa Code §368.18 (1997):

> If a petition or plan is substantially amended, the committee shall continue the hearing to a later date and serve and publish a notice describing the amended petition or plan, as required in section 368.15.

The triggering contingency in this language is whether the second motion to amend resulted in a "substantial" amendment. If not, then the hearing could go forward as it did with no new notice required.

As the Iowa Supreme Court has earlier pointed out

> It has also been said the word 'substantial' is a relative and not exact term subject to a rule of thumb. It is susceptible of different meanings according to the circumstances of its use. In considering the word, it must be examined in its relation and context, and its meaning gauged by all the surrounding circumstances.

Smith v. City of Port Dodge, 160 N.W.2d 492, 497-98 (Iowa 1968) (defining "substantial amendment" for purposes of zoning statute) (citations omitted). As applied to the proposed amendment in question (pertaining to the extent of the annexation territory), the question becomes whether additional time and notice would be required to deal with the merits or the proposal, as applied to the amended area. The obvious answer to that question (as found by the respondent) is "No," The amendment reduced the area of the annexation territory; no new property owners were added who would require statutory notice. The objections posed by those in the position of the petitioner would not gain additional viability if the proceedings were continued—the merits of the proposal (as measured by the city's ability to provide services and benefits) were not changed by the reduction in the territory. The amendment, while "substantial in terms of the area involved (it removed from the territory approximately 2,000 acres from the original total of 8890 acres) was not "substantial" in terms of how that term is used in Iowa Code

§368.18—it provided no basis for delaying the hearing on the merits of the proposal. The respondent's decision to grant the city's second motion to amend petition was properly made.

Merits of the proposal/substantial evidence. The approval (or disapproval) of the petition for annexation in question is governed by Iowa Code §§368.16 and 368.17 (1997). §368.16 requires approval of any proposal "which [the committee] finds to be in the public interest," taking into account at least the following factors: 1) statements in the petition or plan, and evidence supporting those statements; 2) recommendations of the regional planning authority for the area; 3) commercial and industrial development; 4) Potential growth in population; 5) cost and adequacy of existing services and facilities; 6) potential effect of the proposal and of possible alternative proposals on the, cost and adequacy of services and facilities; and 7) potential effect of the proposal on adjacent areas, and on any unit of government directly affected, included but not limited to the potential effect on future revenues of any such unit of government. Iowa Code §368.16 (1997).

As applied to an annexation proposal, Iowa Code §368.17 prohibits such a proposal if any of the following are shown to be true; 1) the annexation territory is not adjoining the city to which it will be annexed: 2) the city will not be able to provide to the territory substantial municipal services and benefits not previously enjoyed by the territory; 3) the motive for annexation is not solely to increase revenue to the city; and 4) the annexation created an island, as defined in Iowa Code §368.1(10) (1997). Taking these statutes together, unless the respondent were to determine the annexation proposal violated some

aspect of Iowa Code §368.17, it is required to approve the proposal if it found it to be in the public interest. *Pruss*, 687 N.W. 2d at 285.

The question for this court to resolve is whether the respondent's approval of the annexation proposal in question was arbitrary, unreasonable, or without substantial supporting evidence." Iowa Code §368.22 (1997). Agency action is arbitrary when it is taken without regard to law or facts of ease, and is unreasonable when it is clearly against reason and evidence. *Dico, Inc. v. Iowa Employment Appeal Board,* 576 N.W.2d 352, 354 (Iowa 1998). As stated earlier in this ruling, the respondent's decision is supported by substantial evidence "[if] a reasonable person would find the evidence adequate to reach [such] a decision. . . ." *Pruss*, 687 N.W, 2d at 284. Most importantly, evidence is not insubstantial if differing conclusions can be drawn from it "[T]he ultimate question is whether the evidence supports the finding actually made, not whether the evidence would support a different finding," *State v. Dohlman*, 725 N.W. 2d 428, 430 (Iowa 2006).

The city introduced a total of 27 exhibits and called three witnesses at the public hearing held on August 16, 2005 to address the merits of the annexation proposal. The essence of the city's exhibits have been summarized in its brief and will not be repeated in this ruling. *See* Brief of intervenor/respondent, pages 3-6. The three witnesses called by the city were Mike Matthes, James Grant and Allen McKinley. All three witnesses were current or former long-term employees of the City of Des Moines. They each spoke at length consistent with their training and experience as to the benefits of the proposal, the ability of Des Moines to provide services to the

residents of the territory, and the financial condition of the city.[4] The perspective of the witnesses' testimony (especially that of Mr. McKinley) looked to the city's capabilities both at the time the petition was first filed in 1998 and in 2005.

In response, a number of individuals (including the petitioner) spoke in opposition to the proposal. The gist of the opposition was based on the claimed inability of the City of Des Moines to provide services and benefits to the residents of the annexed area based in large part upon the fiscal irresponsibility of the city in the past and anticipated future. It was argued that the proposed annexation was neither in the interest of the current residents of Des Moines or the residents in the areas proposed to be annexed, and that the real reason for the proposal was solely to increase the city's tax base to support a faltering municipal budget. Certified Record, Item 137 and Item 47, pages 5-8, items 10-12, 14, 16.

Upon consideration of the evidence presented, the respondent concluded that the city of Des Moines "had the ability to provide substantial municipal services and benefits not previously enjoyed in the territory" as of the time the petition was filed. Certified Record, Item 147, page 9. These included the provision of police, fire, recreational and building services, water service, sanitary sewer service and land use planning. *Id.* at pages 9-11, item 25. It also found that the motivation behind the proposed

[4] Once again, in the interests of brevity, the court incorporates by reference the summary of the testimony of these witnesses as stated within the city's brief. *Id.* at pages 6-13. The court has carefully reviewed the transcript of the august 16 hearing (Item 137) and finds the city's summary to be both accurate and complete.

annexation was 'to promote orderly growth, to reduce the cost of future public facilities and services, to insure efficient provision and maintenance of services and facilities, to knelt from new development opportunities, and to implement the balanced growth year 2020 population and job protections as adopted by the Metropolitan Planning Organization," and that the sole motive was not to increase tax revenues. *Id.* at page 11, page 26. Lastly, it concluded the proposed annexation was in the public interest most notably due to the city's continued ability to provide services and benefits as of 2005 and the lack of any opposition from any adjoining or affected governmental entity. *Id.* at page II. item 27.[5]

The passion and intensity with which the petitioner has contested this annexation makes it clear to this court that he believes the city of Des Moines is incapable of providing for him and his neighbors, and that it has concocted a "smoke and mirrors" presentation designed to deceive the respondent into believing to the contrary. He urges the court to see the city's proposal for what it really is and undo a terrible injustice. He makes this plea apparently assuming the court would come to a different conclusion than the respondent once it reviews all the available evidence. Even if this were the case (which should not be assumed), that is not the standard for

---

[5] The respondent also concluded the territory adjoined the current city boundary, no moratorium Agreement currently in place prohibited the annexation, and the approval of the petition would not create a statutory island. Certified Record, Item 147, page 9, item 12-24. The first of these conclusions is not contested the second, has already been dealt with by this court and in *Anderson I*. And the third conclusion is supported by the argument which has also been ratified by this court.

this court on review of the respondent's actions. To the contrary, that decision was based on not merely substantial, but overwhelming evidence, and was consistent with the applicable facts and law. The decision was neither arbitrary nor unreasonable, and was supported by substantial evidence.

The court believes it has addressed all of the arguments preserved by the petitioner in opposition to the annexation proposal in question, and none of those arguments present a valid obstacle to that proposal. The decision of the agency should, therefore, be affirmed.

IT IS THEREFORE ORDERED that the decision of the respondent dated September 1, 2005 is affirmed in its entirety. The costs of this proceeding are assessed to the petitioner.

Dated this 16th day of April 2007.

/s/ Michael D. Huppert
Michael D. Huppert
Judge, Fifth Judicial District of Iowa

Copies to:

John Anderson
Christine Scase
Mark Godwin

APPENDIX C

THE SUPREME COURT OF IOWA

No. 07-1105

JOHN FRANCIS ANDERSON,
Petitioner-Appellant-Applicant,

vs.

THE IOWA CITY DEVELOPMENT BOARD,
Defendant-Appellee-Resister.

THE CITY OF DES MOINES,
Intervenor-Appellee-Resister.

Polk County No. CVCV005912
Filed May 19, 2009

ORDER

After consideration by this court. further review of the above captioned case is denied.

Dated this 19th day of May, 2009.

THE SUPREME COURT OF IOWA

By /s/ Marsha K. Ternus
Marsha K. Ternus, Chief Justice

APPENDIX D

ANNEXATION MORATORIUM AGREEMENT

This Agreement entered into by and between the incorporated City of Des Moines Iowa and the incorporated City of Carlisle, Iowa as authorized by a resolution of each respective Council in accordance with: Section 368.4, code of Iowa, is as follows:

1. The titles of Des Moines and Carlisle agree upon the establishment of a line of demarcation to be located as follows:

> commencing at the intersection of the center line of the proposed future Relocated Iowa Highway 65 and the south bank of the Des Moines River; thence southwesterly and southerly along the center line of said Relocated Highway 65 to its intersection with the East section line projected northerly of Section 5, Township 77 North, Range 23 West of the 5th P.M.; thence southerly along said northerly projection of said Section 5, and the East section lines of Sections 5, 8 and 17 of said Township 77 North to the Northeast corner of Section 20 in said Township, said point in three miles South of County Line Road.
>
> which line is marked on the maps which are attached hereto marked Map 1 of 2 and Map 2 of 2 and made a part of this Agreement by reference.

2. The City of Des Moines agrees to refrain from annexing territory that lies to the east and south of the demarcation line for a period of ten (10) years from the date of this Agreement.

3. The City of Carlisle agrees to refrain from annexing territory that lies to the north and west of

the line of demarcation for a period of ten years from the date of this Agreement.

4. This Agreement is applicable to all annexation proceedings, to the fullest extent allowed by Chapter 368 of the Iowa Code with respect to the above-described areas. Each city participating in this Agreement agrees that it stall not annex in violation hereof and further agrees that it will take action to the fullest extent allowed by law to prevent and discourage voluntary annexation pursuant to Section 368.7 of the Code of Iowa, and the cities will not give consent to petitions or applications for an annexation under said sections of the Iowa Code which would violate the terms of this Agreement.

5. The entity that first annexes shall, as a part of its annexation, be it voluntary or involuntary, encompass the full extent of any public right-of-way immediately abutting the proposed annexation area.

Dated this 2nd day of July, 1990.

CITY OF CARLISLE, IOWA

By /s/ Dennis D. Rhodes

ATTEST:

Ethel L. Lee
City Clerk

I, Ethel L. Lee, City Clerk of the City of Carlisle, Iowa, hereby certify that the above and foregoing is a true copy of an agreement passed by the City Council of Carlisle, Iowa at a meeting on the 23rd day of July, 1990, signed by the Honorable Mayor Dennis D Rhodes Sr., day of 23rd day of July, 1990.

/s/ Ethel L. Lee
Ethel L. Lee , City Clerk

CITY OF DES MOINES, IOWA

By /s/ John P. Dorrian
John P. Dorrian, Mayor

ATTEST:

/s/ Donna V, Boetel-Baker
Donna V, Boetel-Baker, City Clerk

I, Donna V. Boetel-Baker , City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an agreement approved by the City of Des Moines, Iowa at a meeting on the 2nd day of July, 1990 signed by the Honorable Mayor John P. Dorrian, on the 3rd day July of 1990.

/s/ Donna V, Boetel-Baker
Donna V. Boatel-Baker, City Clerk

APPENDIX E

BEFORE THE CITY DEVELOPMENT BOARD
STATE OF IOWA

NO. UA04-31 DES MOINES

IN THE MATTER OF THE VOLUNTARY ANNEXATION OF THE CITY OF DES MOINES WITHIN THE URBANDIZED AREA OF THE CITY OF NORWALK

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND DETERMINATION

TO: Cities of Des Moines and Norwalk, Polk County Board of Supervisors, Polk County Attorney, Des Moines Area Metropolitan Planning Organization, Iowa Attorney General, Iowa Department of Transportation and affected public utilities.

STATEMENT OF THE CASE

The City of Dos Moines filed its request for City Development Board approval of annexation of territory within the urbanized area of Norwalk on August 19, 2004 Notice of City Development Board review or the request and owner's application was given on September 1, 2004, 2004, and the Board considered the matter at its October 14, 2004 meeting.

The City Development Board. having considered the City's request for approval, the property owner's application, and all evidence submitted by the affected parties hereby makes the following findings of fact, conclusions of law and determination:

FINDINGS OF FACT

1. On February 12, 2004, by written application, which included a map, The Black Officers Memorial, Inc., by Holden Gentry, Attorney and Agent, requested the City of Des Moines to annex the following described property owned by them and located in Polk County, Iowa. The remainder of the proposed territory is owned by the City or Des Moines and the United States Federal Government and Polk County Iowa.

   The proposed annexation territory is described in Appendix A attached hereto and by this reference made a part of.

2 On February 10, 2004, by resolution, the Polk County Board of Supervisors approved support of the annexation of territory defined in Findings of Fact one (1) Appendix A.

3. On February 12, 2004, the City of Des Moines published in an official county newspaper notice of the City Council's meeting on March 8, 2004, to consider the application for voluntary annexation.

4. On February 12, 2004, the City of Des Moines provided a copy of the application for voluntary annexation to the City of Norwalk, Polk County Board of Supervisors, Des Moines Area Metropolitan Planning Organization, Iowa Department of Transportation, property owners, adjoining property owners, and affected public utilities.

5 By resolution dated March 8, 2004, which contained a legal description, the City Council

of Des Moines voted to annex the subject property.

6. The area to be annexed is within two miles of the City of Norwalk and is therefore within its urbanized area.

7. The area to be annexed has a common boundary with the City of Des Moines of more than 50 feet.

8. The area to be annexed does not contain railroad right-of-way.

9. On August 9, 2004, the City of Des Moines received correspondence from the Department of the Army Corps of Engineers, Omaha District, stating no objection to the annexation of the Fort Des Moines Army Reserve Center.

10. On August 19, 2004; the City requested the City Development Board to approve the annexation of the territory described in finding number one. Said request included a copy of the owner's application, map and City Council resolution.

11. On September 1, 2004, the City Development Board notified, by mail, the Cities of Des Moines and Norwalk, Polk County Board of Supervisors, Polk County Attorney, Des Moines Area Metropolitan Planning Organization, Iowa State Attorney General, Iowa Department of Transportation and affected public utilities of the proposed annexation and request for approval. Said notice invited oral and written evidence relative to the proposed annexation.

12. On September 7, 2004, John F Anderson filed a Resistance to the annexation.

13. The Board considered the request for annexation and the resistance filed by John F. Anderson at its September 9, 2004, meeting and found arguments offered in the resistance as applied to this annexation were irrelevant and found the application for annexation to be complete and properly filed.

14. On September 15, 2004, John F. Anderson filed a petition for rehearing on Des Moines' application for annexation.

15. On September 17, 2004, the City of Des Moines flied a resistance to John F. Anderson's petition for rehearing.

16. On September 28, 2004, the City Development Board notified, by mail, the Cites of Des Moines and Norwalk, Polk County Board of Supervisors, Polk County, Attorney, Des Moines Area Metropolitan Planning Organization, Iowa State Attorney General, Iowa Department of Transportation and affected public utilities of the October 14, 2004 meeting to consider the petition for rehearing. At that meeting the Board denied John F. Anderson's petition for rehearing.

17. Based on the information favoring the annexation found in the application and other materials filed by the City of Des Moines and the absence or evidence of any potential adverse consequences the Board finds the annexation to be in the public interest.

CONCLUSIONS OF LAW

1. The territory to be annexed "adjoins" the City of Des Moines as the term is defined in Section 368.1(1) Iowa Code and is within the "urbanized area" of the of Norwalk as the term is defined in Section 368. 1 (15) Iowa Code.
2. The City published notice of the filing of the petition and provided copies of the proposed annexation to parties in accordance with the requirements of Section 368.7 Iowa Code.
3. The City Development Board has jurisdiction to approve or decline the owner's application for annexation Section 368.7(3) Iowa Code. If the owner's application is approved by the Board, the Board is required to file portions of the proceedings in accord with Section 368.7 Iowa Code.
4. The resolution by the City Council of Des Moines conforms with Section 368.7 Iowa Code.
5. The City of Des Moines's request for Board approval and the annexation is in substantial compliance with 263 Iowa Admin Code 7.2.
6. In accord with the standards set forth in Chapter 368 Iowa Code the annexation proposal is in public's interest.

Dated this 1st day of November 2004.

CITY DEVELOPMENT BOARD

/s/ James Halverson
James Halverson, Chairperson
signature affixed by Steven R. McCann Administrator: for City Development as authorized under 263-9.11(2) Iowa Administration Code

THEREFORE. IT IS ORDERED that the application of the following described territory to the City of Des Moines is hereby approved:

> The proposed annexation territory is described in Appendix A and attached hereto and by this reference made a part of.

IT IS FURTHER ORDERED that the owner's annexation application and map, City Council resolution, notices of Board review and this Order be filed by the Board with the Des Moines City Clerk and that the Board file a copy of the map and legal description with the Iowa Department of Transportation. If no appeal is filed within 30-days of the date of this Order, the City Development Board will file with Iowa Secretary of State and record with the Polk County Recorder the documents necessary to compile this annexation. All recording and filing fees will be charged to the City or Des Moines.

Dated this 1st day of November 2004.

CITY DEVELOPMENT BOARD

/s/ James Halverson
James Halverson, Chairperson

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon:

Ms. Diane Rauh
Des Moines City Clerk
400 East 1st Street
Des Moines, IA 50309

Mr. John Sarcone
Polk. Co. Attorney
206 6th Avenue
Des Moines, IA 50309-1891

Mr. Roger Brown
Des Moines Assistant
City Attorney
400 E 1st Street
Des Moines. IA 50309

Polk Co. Bd. of Supervisors
111 Court Avenue
Des Moines, IA 50309-2207

Mr. Bruce Bergman
Des Moines City
Attorney
400 E 1st Street
Des Moines, IA 50309

Mr. Lorne Wazny
Iowa Dist. Trans. Planner
100 E Euclid Avenue Ste 7
Des Moines, IA 50313
Cc: Jorge Zamora

Ms. Joyce Cortum
Norwalk City Clerk
706 North Avenue
Norwalk, IA 50211-1417

Said copy was mailed in an envelope addressed to them at the address shown above, with postage fully paid and by depositing same in an United States Post Office depository in Des Moines Iowa on the 1st day November 2004.

Local Delivery
Honorable Tom Miller, Iowa Attorney General

/s/ Ragina Ostendorf
Ragina Ostendorf, Secretary

Legal Description of territory to be annexed
to the City of Des Moines CDB Case No. UA04-31

Parcel No. 150/00089-004-000
Owner: United States of America
Legal: Beginning at a point at the Southwest Corner of the Northwest 1/4 of Section 34. Township 18 North, Range 24 West of the 5 P.M.; thence South 89°51' East a distance of 30.0 feet; thence North 0°05'04" West a distance of 414.28 feet; thence North 00°31'10" West a distance of 168.93 feet; thence South 89°51 East a distance of 138.75 feet; thence North 0°03' West a distance of 374.7 feet; thence South 89°51' East a distance of 215.03 feet; thence North 55°17' East a distance of 403.1 feet; thence North 0°13' East a distance of 95.9 feet to the Southwest Corner of Lot 36, Somerset. an official Plat; thence North along the West lines of Lots 36 through 43 of said Somerset to the Northwest Corner of said Lot 49; thence East along the North lines of Lots 43 through 49 of said Somerset to a point 45.04 feet East of the Northwest Corner of said Lot 49; thence North along the West line of Lot 1, Somerset 2, an Official Plat, and along the northern extension of the West line of said Lot 1 to the North line of said Section 34; thence. West along the North line of said Section 34 to the Northwest Corner of said Section 34; thence South along the West line of said Section 34 to the Point of Beginning, Beginning in Polk County, containing 34.2 acres, more or less.

Parcel No. 150/00084-007-000
Owner: United States of America
Legal: Beginning at the Southeast corner of the Northeast 1/4 of Section 33, Township 78 North, Range 24 West of the 5th P.M.; thence North 00°37'21" West, 394.15 feet; thence South 89°59'27" West, 263.38 feet; thence South 00°37'02" East, 392.89 feet; thence South 89°44'06" East, 263.39 feet to the Point of Beginning, situated in Polk County, Iowa, containing 2.38 acres, more or less.

Parcel No. 150/00084-005-000
Owner: United States of America
Legal: Commencing as a point of reference at the Southeast corner of the Northeast 1/4 of Section 33, Section 33, Township 78 North, Range 24 West of the 5th P.M.; thence North 89°44'06" West, 263.39 feet to the Point of Beginning: thence continuing North 89°44'16" West, 1743.12 feet; thence North 00°36'11" West, 585.53 feet; thence South 89°52'54' East, 1341.54 feet; thence North 00°02'18" East, 20.00 feet: thence South 89°52'54"' East, 267.04 feet; thence North 78°11'31" East. 136.69 feet; thence South 00°37'02" East, 638.25 feet to the Point of Beginning, situated in Polk County, Iowa and containing 23.74 acres, more or less.

Parcel No 150/00084-006-000
Owner: City of Des Moines
Legal: Commencing as a point of reference at the Southeast Corner of the Northeast 1/4 of Section 33, Township 78 North, Range 24 West of the 5th P.M., thence North

00°'37'021" West, 394.15 feet to the Point of Beginning; thence South 89°59'27" West, 263.38; feet; thence North 00'37'02" West, 245.36; feet; thence South 89°52'54" East, 160.94 feet; thence South 00'37'02" East, 266.36 feet to the Point of Beginning, situated in Polk County, Iowa, and containing 1.59 acres, more or less.

Parcel No. 150/00089-005

Owner: State of Iowa—Department of Transportation

Legal: All that part of E. Army Post Road, if any, in the West 1/2 of the Northwest 1/2 of Section 34, Township 78 North, Range 24 West of the 5th P.M., Polk County, Iowa, not previously annexed into the City of Des Moines.

TOGETHER WITH all that part of Chaffee Road, if any, in the. North 1/2 of Sections 33 and 34, Township 78 North, Range 24 West of the 5th P.M., Polk County, Iowa, riot previously annexed into the City of Des Moines.

APPENDIX F

IN THE IOWA DISTRICT COURT
FOR POLK COUNTY

Case Nos. CV 4022

JOHN F. ANDERSON,
Petitioner,

vs.

CITY DEVELOPMENT BOARD OF THE STATE OF IOWA,
Respondent,

and

CITY OF DES MOINES, IOWA,
Intervenor.

RULING ON CITY OF DES MOINES, IOWA'S MOTION TO INTERVENE AND ON RESPONDENT AND INTERVENOR'S MOTION TO DISMISS

Hearing was held before the Court on May 9, 2002 in the above captioned case on the City of Des Moines, Iowa's Motion to Intervene and on the Respondent and Intervenor's Motion to Dismiss. Petitioner John F. Anderson personally appeared *pro se*. Assistant Attorney General Christie J Scase appeared for Respondent Deputy City Attorney Mark Godwin appeared for Intervenor. At the: hearing Petitioner stated he had no objection or resistance to the City of Des Moines, Iowa's Motion to Intervene filed on April 9, 2002. The Court therefore finds that the City of Des Moines. Iowa's Motion to Intervene should be granted, The Intervenor has filed a joinder in the City Development Board's Motion to Dismiss.

Based upon a review of the motion, resistance, briefs, legal authority cited and hearing the arguments of the parties, the Court enters the following ruling and order.

RULING

Petitioner John F. Anderson filed a Petition for Judicial Review with the district court on March 15, 2002. In summary, the Petition, based on Iowa Code §§ 368.22 and 17A.19, seeks judicial review of a ruling by the City Development Board thereafter ("Board") made at a January 17, 2002 hearing that the boundary as set forth in the 1990 Moratorium Agreement between the City of Des Moines (hereafter "City") and City of Carlisle did not include the area sought to be annexed by the City's Petition filed in 1998, City Development Board Case No. A 98-03. Based upon this finding or ruling, the Board used to dismiss the City's Petition for Annexation as requested by Anderson in his "Motion for Evidentiary Hearing A—9803 filed September 10, 2001. Anderson tiled a Motion for Rehearing, which the Board denied on February 14. 2002.

The Respondent and Intervenor's Motion to Dismiss asserts that the ruling of the Board is not a final decision of the agency as to the City's Petition fin Annexation in Case No, A 98-03, and that the district court, therefore, lacks jurisdiction to hear this appeal. After reading the authority cited by Respondent and Intervenor, the Court is convinced that this issue is controlled by the case of *Dunn v. City Development Board*, 623 N.W.2d 830 (Iowa 2001), which arose out of earlier proceedings in this same annexation dispute. The Dunn case held that the district court did not have jurisdiction to entertain Dunn's and the other Petitioner's Judicial Review Petition

because the appeal was not from a final agency action or decision, under either Iowa Code § 368.22 or § 17A.19.

The question then for this Court is whether the ruling by the Board on Anderson's Motion is a final decision or final agency action. This Court concludes that the January 17, 2002 ruling by the Board is not a final decision or action. As noted in Iowa Code § 368.22, an [a]ppeal must be filed within thirty days of the filing of a decision of the publication of notice of the result of an election," In Iowa Code § 368.19, it provides: "The committee shall approve or disapprove the petition or plan as amended, within ninety days of final hearing, and shall file *its decision* for record and promptly notify the parties to the proceeding of *its decision*.'" The "decision" referenced in § 368.22 is the decision described in § 368.19, which as held in *Dunn* must be the final decision before the district cowl has jurisdiction to hear the administrative appeal. Likewise, Anderson must exhaust his administrative remedies before an appeal may be taken under Iowa Code § 17A.19. This too is addressed in *Dunn* and the holding supports the Board and City's Motion to Dismiss. The Court concludes that the Board's ruling on Anderson's motion is not a final agency action, the Board has not completed its administrative proceedings so as to be a final agency action and the district court does not have jurisdiction. Respondent and Intervenor's Motion to Dismiss must be granted. Since this Court does not have jurisdiction to address Petitioner's Petition, the Court need not consider the other issues raised by Petitioner in his Petition or in resistance to the Motion to Dismiss. The Court finds it appropriate to add that during the course of the hearing Respondent and Intervenor stipulated that Anderson has preserved

all of his issues raised in the pending Petition for appeal at a later, appropriate time.

ORDER

IT IS THE ORDER OF THE COURT that the City of Des Moines, Iowa's Motion to Intervene is GRANTED.

IT IS THE FURTHER ORDER OF THE COURT that the Respondent's Motion to Dismiss, joined by Intervenor, is GRANTED. Petitioner's Petition for Judicial Review filed on March 15, 2002 is DISMISSED. Costs are assessed to the Petitioner.

SO ORDERED this 9th day of May 2002

/s/ RICHARD G. BLANE, II
RICHARD G. BLANE, II District Judge
Fifth Judicial District of Iowa

Copies to:

John F. Anderson
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APPENDIX G

BEFORE THE CITY DEVELOPMENT BOARD
IN THE MATTER OF DES MOINES
INVOLUNTARY ANNEXATION PETITION

CASE A 98 03

EVIDENTIARY HEARING—
SUMMARY OF PROCEEDINGS

BACKGOUND

In July of 1990, the cities of Des Moines and Carlisle entered an annexing moratorium agreement pursuant to Iowa Code Section 368.4, under which each city agreed not to annex certain territory for a period of ten years. The agreement describes a line of demarcation as "commencing at the intersection of the centerline of the proposed future Relocated Highway 65 and the south bank of the Des Moines River, thence southwesterly and southerly along the centerline of said Relocated Highway 65 to its intersection with the East Section line projected northerly of Section 5, township 77 North, Range 23 West of the 5th P.M.; . . . ."

The city of Des Moines filed a petition for involuntary annexation of land in Polk and Warren counties in June of 1998, Board Case No, A 98-03. The territory includes land lying between Des Moines and Carlisle.

On September 19, 2001, John Anderson filed a Motion for Formal Evidentiary Hearing to allow submittal of evidence to the City Development Board regarding whether Des Moines' petition for involuntary annexation violated the terms of the annexing

moratorium agreement between Des Moines and Carlisle.

At its meeting on September 13, 2001, the Board found no reason to dismiss Des Moines' petition, and directed that local representatives be appointed to form a committee to consider the petition. Also at this meeting, the Board received Mr. Anderson's Motion for Formal Evidentiary Hearing, and directed that it be placed on the Board's agenda for October 11, 2001 for consideration.

At its October 11, 2001 meeting, the Board granted Mr. Anderson's Motion and set an Evidentiary. Hearing for January 17, 2002.

ARGUMENTS OFFERED AT THE EVIDENTIARY HEARING

During the Evidentiary Hearing, Mr. Anderson, the city of Des. Moines, and Warren County presented arguments to the Board on whether Des Moines' petition violated the annexing moratorium agreement between Des Moines and Carlisle. Mr. Anderson argued that the only legal finding available to the Board is that the line of demarcation described in the annexing, moratorium agreement would begin at the intersection of the 1990 location of Highway 65 (East 14th Street) and the south bank of the Des Moines River, then following the centerline or that road to the Warren County line. He interviewed several people that were city council members or staff of the City of Des Moines at the time that the agreement was negotiated.

Warren County argued that the line of demarcation should be where the proposed Highway 65 was drawn on maps attached to the annexing moratorium agreement, not where the highway was finally constructed.

Des Moines argued that: the maps attached to the annexing moratorium agreement were not referenced to show the location of the proposed relocated future Highway 65, rather they were referenced regarding that part of the demarcation line that extends south into Warren County; there had been no evidence presented that Des Moines' annexation petition violates either Map 1 or Map 2 attached to the agreement; that the provisions of Iowa Code Section 368.4 control this matter, not the Code Sections regarding legal descriptions referenced by Mr. Anderson; it was not the intent of the cities of Des Moines and Carlisle to use S.E. 14th Street as the line of demarcation in the annexing moratorium agreement, they could have referenced it if they had wanted to use it, but they did not; at the time the agreement was entered, land east of S.E. 14th Street was already within the city of Des Moines; there has been no testimony from the city of Carlisle claiming that Des Moines' petition violates the agreement; and the intent of the agreement was for the line of demarcation to follow the centerline of the relocated highway once it was constructed

CITY DEVELOPMENT BOARD REVIEW

At the request of the Board, Assistant Attorney General Chris Scase, summarized the issue to be addressed. She stated that the Iowa Supreme Court had determined that the agreement between Des Moines and Carlisle was valid and that the description of land affected by the agreement though somewhat ambiguous, but legally sufficient. She said that the purpose of holding the evidentiary hearing was for the Board to receive evidence regarding what line of demarcation was intended by the cities in their agreement and whether Des Moines petition complies

with the agreement. She noted that there had been no evidence provided at the hearing that the annexation petition violated the agreement.

The Board determined that the petition was in compliance with the annexing moratorium agreement between Des Moines and Carlisle.

The evidence and testimony presented at hearing indicated to the Board that: At the time the agreement was entered, the cities were aware of the plans to construct a new highway. The cities were willing to enter an agreement using the location of the highway to identify an area each city could use as a basis for planning for development. This should be encouraged by the Board, as opposed to cities waiting for such a project to be completed then trying to react to it. The agreement has been in place since 1990, and until very recently, there had been no challenge to what the agreement meant. The cities had a general understanding of where the highway would be built, but did not know the exact location at the time the agreement was entered. Those people that testified at the hearing who were present at the time the agreement was created understood that the line of demarcation would be the centerline of the road when it was constructed, they understood that the line would not be definite until the highway was constructed. There was no testimony from those directly involved in the agreement that Des Moines' petition was not consistent with what was intended in the agreement. It is logical for the cities to describe the line the way they did if they wanted to use the constructed highway as the line of demarcation. If they had intended something else, they could have used identifiable physical or manmade landmarks to identify the line.

APPENDIX H

U.S. Constitution First Amendment:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

APPENDIX I

U.S. Constitution Fourteenth Amendment Sections 1 and 5

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

APPENDIX J

Iowa Constitution Article III Section 30

Local or special laws—general and uniform—boundaries of counties.

Sec. 30. The general assembly shall not pass local or special laws in the following cases:

For the assessment and collection of taxes for state, county, or road purposes;

For laying out, opening, and working roads or highways;

For changing the names of persons;

For the incorporation of cities and towns;

For vacating roads, town plats, streets, alleys, or public squares;

For locating or changing county seats.

In all the cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the state; and no law changing the boundary lines of any county shall have effect until upon being submitted to the people of the counties affected by the change, at a general election, it shall be approved by a majority of the votes in each county, cast for and against it.

Laws uniform, *see* Art. I, §6

APPENDIX K

United States Code Title 42
sections 1983, 1985(2, 3), and 1986

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

§ 1985(2, 3). Conspiracy to interfere with civil rights

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict,

presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such

conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

§ 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

APPENDIX L

1997 Iowa Code Sections § 17A.19(8), § 368.4, § 368.7, § 368.11, § 368.19, § 368.20, § 368.22

§ 17A.19 Judicial review. Except as expressly provided otherwise by another statute referring to this chapter by name, the judicial review provisions of this chapter shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of such agency action. However, nothing in this chapter shall abridge or deny to any person or party who is aggrieved or adversely affected by any agency action the right to seek relief from such action in the courts.

8. The court may affirm the agency action or remand to the agency for further proceedings. The court shall reverse, modify, or grant any other appropriate relief from the agency action, equitable or legal and including declaratory relief, if substantial rights of the petitioner have been prejudiced because the agency action is:

a. In violation of constitutional or statutory provisions;

b. In excess of the statutory authority of the agency;

c. In violation of an agency rule;

d. Made upon unlawful procedure;

e. Affected by other error of law;

f. In a contested case, unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole; or

g. Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion

§ **368.4 Annexing moratorium**. A city, following notice and hearing, may by resolution agree with another city or cities to refrain from annexing specifically described territory for a period not to exceed ten years and, following notice and hearing, may by resolution extend the agreement for subsequent periods not to exceed ten years each. Notice of a hearing shall be served on the board, and a copy of the agreement and a copy of any resolution extending an agreement shall be filed with the board within thirty days of enactment. If such an agreement is in force, the board shall dismiss a petition or plan which violates the terms of the agreement.

§ **368.7 Voluntary annexation of territory**. 1. All of the owners of land in a territory adjoining a city may apply in writing to the council of the adjoining city requesting annexation of the territory. Territory comprising railway right-of-way or territory comprising not more than twenty percent of the land area may be included in the application without the consent of the owner to avoid creating an island or to create more uniform boundaries if a copy of the application is mailed by certified mail to the owner and each affected public utility, at least ten days prior to any action taken by the city council on the application. The application must contain a legal description and a map of the territory showing its location in relationship to the city. An annexation including territory comprising not more than twenty percent of the land area without consent of the property owners is not complete without approval by four-fifths of the

members of the board after a hearing for all affected property owners and the county.

2. An application for annexation of territory not within an urbanized area of a city other than the city to which the annexation is directed must be approved by resolution of the council which receives the application. In the discretion of a city council, the resolution may include a provision for a transition for the imposition of taxes as provided in section 368.11, subsection 13. Upon receiving approval of the council, the city clerk shall file a copy of the resolution, map, and legal description of the territory involved with the secretary of state, county board of supervisors, each affected public utility, and the state department of transportation. The city clerk shall also record a copy of the legal description, map, and resolution with the county recorder. The secretary of state shall not accept and acknowledge a copy of a legal description, map, and resolution of annexation which would create an island. The annexation is completed upon acknowledgment by the secretary of state that the secretary of state has received the legal description, map, and resolution.

3. An application for annexation of territory within an urbanized area of a city other than the city to which the annexation is directed must be approved both by resolution of the council which receives the application and by the board. The board shall not approve an application which creates an island. Notice of the application shall be mailed by certified mail, by the city to which the annexation is directed, at least ten days prior to any action by the city council on the application to the council of each city whose boundary adjoins the territory or is within two miles of the territory, to the board of supervisors of each

county which contains a portion of the territory, each affected public utility, and to the regional planning authority of the territory. Notice of the application shall be published in an official county newspaper in each county which contains a portion of the territory at least ten days prior to any action by the city council on the application. In the discretion of a city council, the resolution may include a provision for a transition for the imposition of taxes as provided in section 368.11, subsection 13. The annexation is completed when the board has filed and recorded copies of applicable portions of the proceedings as required by section 368.20, subsection 2.

4. If one or more applications for a voluntary annexation and one or more petitions for an involuntary annexation or incorporation for a common territory are submitted to the board within thirty days of the date the first application or petition was submitted to the board, the board shall approve the application for voluntary annexation, if the application meets the applicable requirements of this chapter, unless the board determines by a preponderance of the evidence that the application was filed in bad faith, or that the application as filed is contrary to the best interests of the citizens of the urbanized area, or that the applicant cannot within a reasonable period of time meet its obligation to provide services to the territory to be annexed sufficient to meet the needs of the territory. In consideration of the requests, the board may appoint a committee in the manner provided in section 368.14 to seek additional information from the applicant for voluntary annexation as necessary, including the information required of petitioners pursuant to section 368.11. The board, or the committee, if applicable, shall hold a public hearing on the application for

voluntary annexation in the manner provided for involuntary petitions in section 368.15. The decision of the board under this subsection shall be made within ninety days of receipt of the application by the board. The failure of the board to approve an application under this paragraph shall be deemed final agency action subject to judicial review.

If an application for voluntary annexation is not approved pursuant to this section, the board shall cause the conversion of the application to a petition pursuant to section 368.13 and shall proceed under section 368.14A. The conversion of an application to a petition shall not prejudice the status of the applicant. Judicial review of a board decision under this subsection may be requested by an aggrieved party.

§ 368.11 Petition for involuntary city development action. A petition for incorporation, discontinuance, or boundary adjustment may be filed with the board by a city council, a county board of supervisors, a regional planning authority, or five percent of the qualified electors of a city or territory involved in the proposal. Notice of the filing, including a copy of the petition, must be served upon the council of each city for which a discontinuance or boundary adjustment is proposed, the board of supervisors for each county which contains a portion of a city to be discontinued or territory to be incorporated, annexed or severed, the council of a city if an incorporation includes territory within the city's urbanized area, and any regional planning authority for the area involved.

Within ninety days of receipt of a petition, the board shall initiate appropriate proceedings or dismiss the petition. The board may combine for consideration petitions or plans which concern the

same territory or city or which provide for a boundary adjustment or incorporation affecting common territory. The combined petitions may be submitted for consideration by a special local committee pursuant to section 368.14A.

The petition must include substantially the following information as applicable:

1. A general statement of the proposal.
2. A map of the territory, city or cities involved.
3. Assessed valuation of platted and unplatted land.
4. Names of property owners.
5. Population density.
6. Description of topography.
7. Plans for disposal of assets and assumption of liabilities.
8. Description of existing municipal services, including but not limited to water supply, sewage disposal, and fire and police protection.
9. Plans for agreements with any existing special service districts.
10. In a case of annexation or incorporation, the petition must state that none of the territory is within a city.
11. In a case of incorporation or consolidation, the petition must state the name of the proposed city.
12. Plans shall include a formal agreement between affected municipal corporations and

counties for the maintenance, improvement and traffic control of any shared roads involved in an incorporation or boundary adjustment.

13. In the discretion of a city council, a provision for a transition for the imposition of city taxes against property within an annexation area. The provision shall not allow a greater exemption from taxation than the tax exemption formula schedule provided under section 427B.3, subsections 1 through 5, and shall be applied in the levy and collection of taxes. The provision may also allow for the partial provision of city services during the time in which the exemption from taxation is in effect.

At least ten days before a petition for involuntary annexation is filed as provided in this section, the petitioner shall make its intention known by sending a letter of intent by certified mail to the council of each city whose urbanized area contains a portion of the territory, the board of supervisors of each county which contains a portion of the territory, the regional planning authority of the territory involved, each affected public utility, and to each property owner listed in the petition. The written notification shall include notice that the petitioners shall hold a public meeting on the petition for involuntary annexation prior to the filing of the petition.

Before a petition for involuntary annexation may be filed, the petitioner shall hold a public meeting on the petition. Notice of the meeting shall be published in an official county newspaper in each county which contains a part of the territory at least five days before the date of the public meeting. The mayor of

the city proposing to annex the territory, or that person's designee, shall serve as chairperson of the public meeting. The city clerk of the same city or the city clerk's designee shall record the proceedings of the public meeting. Any person attending the meeting may submit written comments and may be heard on the petition. The minutes of the public meeting and all documents submitted at the public meeting shall be forwarded to the board by the chairperson of the meeting.

§ 368.19 Time limit—election. The committee shall approve or disapprove the petition or plan as amended, within ninety days of the final hearing, and shall file its decision for record and promptly notify the parties to the proceeding of its decision. If a petition or plan is approved, the board shall set a date not less than thirty days nor more than ninety days after approval for a special election on the proposal and the county commissioner of elections shall conduct the election. In a case of incorporation or discontinuance, registered voters of the territory or city may vote, and the proposal is authorized if a majority of those voting approves it. In a case of annexation or severance, registered voters of the territory and of the city may vote, and the proposal is authorized if a majority of the total number of persons voting approves it. In a case of consolidation, registered voters of each city to be consolidated may vote, and the proposal is authorized only if it receives a favorable majority vote in each city. The county commissioner of elections shall publish notice of the election as provided in section 49.53 and shall conduct the election in the same manner as other special city elections.

The costs of an incorporation election shall be borne by the initiating petitioners if the election fails, but if the proposition is approved the cost shall become a charge of the new city.

§ 368.22 Appeal. A city, or a resident or property owner in the territory or city involved may appeal a decision of the board or a committee, or the legality of an election, to the district court of a county which contains a portion of any city or territory involved.

Appeal must be filed within thirty days of the filing of a decision or the publication of notice of the result of an election.

Appeal of an approval of a petition or plan does not stay the election.

The judicial review provisions of this section and chapter 17A shall be the exclusive means by which a person or party who is aggrieved or adversely affected by agency action may seek judicial review of that agency action. The court's review on appeal of a decision is limited to questions relating to jurisdiction, regularity of proceedings, and whether the decision appealed from is arbitrary, unreasonable, or without substantial supporting evidence. The court may reverse and remand a decision of the board or a committee, with appropriate directions. The following portions of section 17A.19 are not applicable to this chapter:

1. The part of subsection 2 which relates to where proceedings for judicial review shall be instituted.
2. Subsection 5.
3. Subsection 8.

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(2)

No. 09-185

Supreme Court, U.S.
FILED
OFFICE OF THE CLERK

In The

Supreme Court of the United States

JOHN F. ANDERSON,

Petitioner,

v.

THE IOWA CITY DEVELOPMENT BOARD, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of Iowa

BRIEF IN OPPOSITION

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COUNTER-STATEMENT OF QUESTION PRESENTED FOR REVIEW

Whether this Court has jurisdiction over this case, where no federal questions were ruled upon by the State Court.

PARTIES INVOLVED

Petitioner: John F. Anderson

Respondents: Iowa City Development Board and The City of Des Moines, Iowa

STATEMENT OF JURISDICTION

Respondent believes there is no jurisdiction as the State Court did not rule upon any federal questions. *See*: 28 U.S.C. § 1257.

STATEMENT OF THE CASE

This is an annexation case. The City of Des Moines initiated an involuntary annexation. The City Development Board of Iowa, Respondent in this case and the administrative agency charged with annexation oversight, approved the annexation. Upon Petitioner's administrative appeal, the Iowa District Court affirmed the City Development Board. (Petition for Writ of Certiorari, Appendix, 16a-35a). The Iowa Court of Appeals affirmed the Iowa District Court in all respects. (Petition for Writ of Certiorari, Appendix, 1a-15a). The Iowa Supreme Court declined to grant further review. (Petition for Writ of Certiorari, Appendix, 35a).

WHY THE PETITION FOR WRIT OF CERTIORARI SHOULD NOT BE GRANTED

In his "Questions Presented For Review", Petitioner references the First and Fourteenth Amendments to the U.S. Constitution as well as 42 U.S.C. §§ 1983, 1985 and 1986. (Petition for Writ of Certiorari, P. i-ii). The same constitutional and statutory provisions are again mentioned several

pages later. In addition, 28 U.S.C. § 1257(a) is identified as the statute conferring jurisdiction upon this court. (Petition for Writ of Certiorari, P. 3).

A review of the ruling of the trial court shows no mention of 42 U.S.C. §§ 1983, 1985 or 1986. Likewise, no mentions of rights guaranteed under the First Amendment to the U.S. Constitution are discussed. (Petition for Writ of Certiorari, Appendix, 16a-35a). There is mention of due process rights in the trial court ruling. (Petition for Writ of Certiorari, Appendix, 18a).

A review of the decision appealed from, rendered by the Iowa Court of Appeals, also reveals no reference to any claims made under 42 U.S.C. §§ 1983, 1985 or 1986 or the First Amendment to the U.S. Constitution. (Petition for Writ of Certiorari, Appendix, 1a-15a). As to the due process claims, those also were not ruled upon by the Iowa Court of Appeals. Although the District Court found that due process issues had been preserved before the administrative agency, those issues were waived by Petitioner on appeal. The Court said:

> . . . the court concludes that the following issues were raised before the agency and initially preserved . . . 2) whether the petitioner's procedural due process rights have been violated; 3) whether his substantive due process rights have been violated . . . of these issues, the first three have been waived as a result of petitioner's inability to cite any meaningful authority beyond the occasional

> generic reference to the Constitution or the phrase "due process."

The Iowa Court of Appeals first noted, and agreed with, the lack of preservation of any federal question. (Petition for Writ of Certiorari, Appendix, 8a-9a). The Court of Appeals then affirmed the District Court, saying:

> We have thoroughly reviewed the briefs and the record in this case. The district court's ruling on Anderson's petition for judicial review is well reasoned and fully supported by the record. We adopt its reasoning as our own and for all the reasons stated therein, we affirm. *See*: Iowa Ct. R. 21.29(1)(d).

(Petition for Writ of Certiorari, Appendix, 10a).

None of Petitioner's federal issues have been ruled upon by the state court. Those issues are raised here for the first time. This Court has no jurisdiction. *Cardinale v. Louisiana*, 394 U.S. 437, 438, 89 S.Ct. 1161, 1162-63, 22 L.Ed.2d 395 (1969).

CONCLUSION

Because none of the federal issues asserted by Petitioner were decided by the state courts, this Court lacks jurisdiction over this case.

Respectfully submitted,

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(3)

Supreme Court, U.S.
FILED
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No. 09-185

IN THE

Supreme Court of the United States

JOHN F. ANDERSON,
Petitioner,

v.

THE IOWA CITY DEVELOPMENT BOARD,
Respondent.

and

CITY OF DES MOINES, IOWA,
Intervenor.

On Petition for a Writ of Certiorari to the Supreme Court of Iowa

REPLY TO OPPOSITION OF CERTIORARI

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September 24, 2009

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REPLY TO OPPOSITION OF CERTIORARI

28 U.S.C. §1257 jurisdiction of this court is clear 'where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution' and 'where any title, right, privilege, or immunity is specially set up' OR 'claimed under the Constitution'. Only with artifice can the respondents claim that issues were not preserved or waived when some constitutional protections have been specially set up and others claimed under the constitution.

The city does not claim any misstatement of fact or law in the petition pursuant to rule 15.2. It does not assert that §368.22 is not overbroad, or that the rights of the petitioner have not been violated under color of law by state actors, or that the courts have correctly construed *Hunter v. Pittsburgh*, or that the election on A98-03 was legal, or that UA04-31 (certiorari Petition pages 39a-48a) does not prove collusion, dishonesty and misrepresentation by the city, state and Iowa attorney general with the complicity of the courts. Under Iowa Rules of Court, all issues not refuted in a responsive brief are deemed admitted but in practice, neglect is simply the city and states way of denying facts and issues

STATEMENT OF THE CASE

This is an annexation case, but this appeal concerns not just how the annexation failed to follow state law, but how the state actors failed to support the constitutions of Iowa and the United States by abrogating the rights of the petitioner under color of state law from the precursory 1990 actions through the 2009 refusal of rehearing by the Iowa Supreme Court. These proceedings have been appealed on the

grounds of what was ruled upon and also upon what the courts evaded through neglect.

ARGUMENT

I. OPPOSITION TO FIRST AMENDMENT ISSUES HINGES UPON MISREPRESENTATION OF THE RECORD

The city purports that no First Amendment issues were preserved by omission of a citation element that disproves the claim. The certiorari petition page 18a states in pertinent part: ". . . the following issues were raised before the agency and initially preserved 1) whether the statutes in question (Iowa Code §§368.4, 368.11, 368.19 and 368.22) are unconstitutional as non-uniform, overly broad, vague, and preempted . . ." §368.22 overbreadth is the First Amendment issue appealed and the court misrepresents that the issue was waived when the issues were actually dismissed pursuant to §368.22 (certiorari petition page 8a). The dismissal was subject to interlocutory and final appeal, not waived.

II. OPPOSITION TO THE FOURTEENTH AMENDMENT ISSUES

Opposition to Fourteenth amendment issues depends upon the court ignoring: its own difficulty in defining the spectrum of due process; the actions of the state as evinced in the petition for certiorari appendix; the city's inability to identify any misstatements of fact or law in the petition as required by rule 15.2. It also requires the court to ignore the Iowa courts notion that there are no constitutional protections related to annexation (petition for certiorari 19a).

As the district court noted, (certiorari petition page 18a) the issues of takings, procedural, and substantive due process were raised and preserved before the agency, yet the court relied upon rote miscitation of *Hunter v. Pittsburgh* to abrogate due process guarantees in addition to disregarding multiple, and specific, state and federal citations as 'generic'. Here Iowa seems to require due process claims to be made with magic words at magic times.

Constitutional guarantees are meaningless if: a legislature can statutorily withdraw them or; the judiciary can fabricate precedent and arbitrarily enforce or ignore controlling law as well as validating invalid city and state actions and ignoring the content of citizen petitions for redress or; if the executive branch can lie, misrepresent, and claim it has fulfilled the guarantees with court approval or; if all post hearing state actions are immune from review if a party fails to submit prescient prophylactic argument of actions that may or may not take place months or years in the future or; if dismissal on exhaustion grounds means the issues are waived for further review. Honesty and integrity are fundamental elements of constitutional guarantees and dishonesty, misrepresentation or collusion violate the basic premises of constitutional law.

III. VIOLATIONS OF U.S. CODE TITLE 42

Throughout proceedings, the petitioner has argued that state actions "under color of state law" denied his rights. If state actors are immunized for unconstitutional acts because citizens do not argue 42 U.S.C. §§1983, 1985, 1986 prior to the state taking the actions, then the law affords no protection even when the city and states transgressions are clear and

palpable as they are here. In this case, the Iowa District Court, Court of Appeals, and Supreme Court complicity with the misdirection and collusion of the city, agency, and attorney general was not indisputable until all state court action had completed and due process was denied, and 368.22 exclusivity operationally bars other court action.

"A due process violation actionable under §1983 is not complete when the deprivation occurs; it is not complete unless and until the State fails to provide due process." *Zinermon v. Burch*, 494 U.S. 113, 126 (1990)

In exceptional circumstances . . . appellate courts, in the public interest, may, of their own motion, notice errors to which no exception has been taken, if the errors are obvious, or if they otherwise seriously affect the fairness, integrity, or public reputation of judicial proceedings. *U.S. v. Atkinson*, 297 U.S. 157 (1936).

IV. IOWA COURTS HAVE SEPARATE STANDARDS FOR LAWYERS AND *PRO SE* LITIGANTS

Based upon decisions related to this case pro se litigants are held to an impossible standard, where pro se pertinent citations are depreciated as generic while the fictional citations of members of the bar like the chronic distortion of *Hunter v. Pittsburgh*, the fabricated cites of the city's appellate brief, and UA04-31 findings of fact and conclusions of law, which would impeach evidence and testimony of any citizen, were validated by the courts. In the integral case of *Des Moines v. City Dev. Bd.*, 633 N.W.2d 305 (Iowa 2001) the petitioners 18 month old request for oral argument was denied by the Iowa Supreme

Court 15 hours prior to the hearing at behest of the Attorney General while all other represented parties gave oral arguments.

CONCLUSION

As shown by the petition for certiorari and it's appendix, the federal questions presented have been preserved despite the city's misrepresentations. The failure, or intentional evasion, of the Iowa courts to address issues presented for review does not mean the issues were not properly before the court, and abstaining from ruling should not provide a shield for constitutional abrogation. The city's annexation was only completed by placing the residents of the territory outside the protection and processes of statutory and constitutional law, and this appeal is the final opportunity to afford them the protection that is theirs by fundamental right as natural persons and U.S. citizens against the unconstitutional actions of statutory creatures like Des Moines, the CDB, the Attorney General and the Iowa Courts.

Respectfully submitted,

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